RECORD AND BRIEFS

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SUPREME COURT, U.S.

Nos. 16-1436 and 16-1540

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

STATE OF HAWAII, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH AND NINTH CIRCUITS

JOINT APPENDIX
(VOLUME 3)

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PETITIONS FOR WRITS OF CERTIORARI FILED: JUNE 1 AND JUNE 26, 2017
CERTIORARI GRANTED: JUNE 26, 2017

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Docket No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/17	1	COMPLAINT *for Declaratory and Injunctive Relief* against Donald J. Trump (Filing fee $ 400 receipt number 0975-1825544.), filed by State of Hawaii. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 JS 44—Civil Cover Sheet, # 13 Tillerson Summons, # 14 State Department Summons, # 15 DHS Summons, # 16 Kelly Summons)(Chin, Douglas) (Entered: 02/03/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/17	2	MOTION for Temporary Restraining Order Douglas S.G. Chin appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum in Support of TRO, # 2 Certificate with Word Count, # 3 Proposed TRO)(Chin, Douglas) (Entered: 02/03/2017)
		* * * * *
2/3/17	4	Summons Issued as to Rex Tillerson, in his capacity as Secretary of State. (emt,) (Entered: 02/03/2017)
2/3/17	5	Summons Issued as to U.S. Department of State. (emt,) (Entered: 02/03/2017)
2/3/17	6	Summons Issued as to U.S. Department of Homeland Security. (emt,) (Entered: 02/03/2017)
2/3/17	7	Summons Issued as to John F. Kelly, in his capacity as Secretary of the U.S. Department of Homeland Security. (emt,) (Entered: 02/03/2017)
2/3/17	8	Order Setting Rule 16 Scheduling Conference for 09:30AM on 4/3/2017 before Magistrate Judge KENNETH J. MANSFIELD—

DATE	DOCKET NUMBER	PROCEEDINGS
		Signed by CHIEF JUDGE J. MICHAEL SEABRIGHT on 2/3/2017. (Attachments: # 1 Memo from Clerk Re: Corporate Disclosure Statements) (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry.
		ATTACH THE SCHEDULING ORDER TO THE INITIATING DOCUMENT (COMPLAINT/NOTICE OF REMOVAL). **THE SCHEDULING ORDER AND MEMO RE: CORPORATE DISCLOSURES MUST BE SERVED WITH THE DOCUMENT.** (Entered: 02/03/2017)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/17	10	Declaration re 2 MOTION for Temporary Restraining Order . (Attachments: # 1 Exhibit A—Doe 1, # 2 Exhibit B—Doe 2, # 3 Exhibit C—Doe 3, # 4 Exhibit D—Dickson Declaration, # 5 Exhibit E—Slaveria Declaration, # 6 Exhibit F—Szigeti Declaration, # 7 Exhibit G—Higashi Declaration, # 8 Exhibit H—Elshikh Declaration)(Chin, Douglas) (Entered: 02/03/2017)
2/3/17	11	Summons (Proposed) (Chin, Douglas) (Entered: 02/03/2017)
2/3/17	12	Summons Issued as to Donald J. Trump, in his official capacity as President of the United States. (emt,) (Entered: 02/03/2017)
2/3/17	13	Summons (Proposed) (Chin, Douglas) (Entered: 02/03/2017)
2/3/17	14	Summons Issued as to United States of America. (emt,) (Entered: 02/03/2017)
2/3/17	15	EX PARTE Motion *for In Camera Review of Exhibits A, B, and C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order*; Clyde J. Wadsworth appearing for Plaintiff State of Hawaii

DATE	DOCKET NUMBER	PROCEEDINGS
		(Attachments: # 1 Declaration of Clyde J. Wadsworth, # 2 Proposed Order) (Wadsworth, Clyde) (Entered: 02/03/2017)
		* * * * *
2/3/17	18	EO: The Court is in receipt of Plaintiff State of Hawaii's Motion for Temporary Restraining Order ("TRO"). Dkt. No. 2. The Government shall file a response to the Motion for TRO by Tuesday, February 7, 2017 at 12:00 noon (HST). The Court will hold a hearing on the Motion for TRO on Wednesday, February 8, 2017 at 9:30 a.m. (HST). (JUDGE DERRICK K. WATSON) (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/03/2017)
2/3/17	19	NOTICE of Hearing on Motion 2 MOTION for Temporary Restrain-

DATE	DOCKET NUMBER	PROCEEDINGS
		ing Order. Motion Hearing date has been set for 2/8/2017 at 9:30 AM in Aha Kupono before JUDGE DERRICK K. WATSON. (tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry. (Entered: 02/03/2017)
		* * * * *
2/6/17	23	Emergency MOTION to Stay re 18 Link,,, Michelle R. Bennett appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Memorandum, # 2 Proposed Order)(Bennett, Michelle) (Entered: 02/06/2017)
2/6/17	24	EO: The Court is in receipt of Defendants' Emergency Motion to Stay All Deadlines Pending Resolution of Appellate Proceedings

DATE	DOCKET NUMBER	PROCEEDINGS
		Regarding Nationwide Injunction ("Motion to Stay"). Dkt. No. 23. Plaintiff State of Hawaii may file a response to the Motion to Stay by no later than Tuesday, February 7, 2017 at 9:00 a.m. (HST). (JUDGE DERRICK K. WATSON)(tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/06/2017)
2/6/17	25	MEMORANDUM in Opposition re 23 Emergency MOTION to Stay re 18 Link,,, filed by State of Hawaii. (Chin, Douglas) (Entered: 02/06/2017)
2/6/17	26	Errata re 25 Memorandum in Opposition to Motion *for Emergency Stay*. (Marie-Iha, Deirdre) (Entered: 02/06/2017)
2/7/17	27	EO: Defendants' Emergency Motion to Stay All Deadlines Pending Resolution of Appellate Proceedings

DATE	DOCKET NUMBER	PROCEEDINGS
		Regarding Nationwide Injunction is hereby GRANTED IN PART. Dkt. No. 23 . All pending deadlines and the hearing set for February 8, 2017 are VACATED. The matter is stayed as long as the February 3, 2017 injunction entered in Washington v. Trump, 2:17-cv-141 (W.D. Wash.), remains in place, or until further order of this Court. All further relief requested by the Emergency Motion is DENIED. A written order setting forth the Court's reasoning will follow. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry Modified to create link to motion on 2/7/2017 (ecs,). (Entered: 02/07/2017)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
2/8/17	29	ORDER GRANTING 15 EX PARTE MOTION FOR IN CAMERA REVIEW OF EXHIBITS A, B, AND C TO DECLARATION OF DOUGLAS S. CHIN IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER. Signed by JUDGE DERRICK K. WATSON on 2/8/2017. (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/08/2017)
2/8/17	30	MOTION to Partially Lift Stay Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit Proposed First Am. Compl., # 2 Exhibit Decl. of Clyde J. Wadsworth, # 3 Exhibit Proposed Order, # 4 Certificate of Service)(Katyal, Neal) (Entered: 02/08/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
2/9/17	31	EO: The Court is in receipt of Plaintiff State of Hawaii's Motion to Partially Lift Stay. Dkt. No. 30. The Government may file a response to the State's motion by Monday, February 13, 2017. Thereafter, the Court intends to rule on the motion without a hearing pursuant to Local Rule 7.2(d). IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/09/2017)
2/9/17	32	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' EMERGENCY MOTION TO STAY DEADLINES PENDING RESOLUTION OF APPELLATE PROCEEDINGS REGARDING NATIONWIDE INJUNCTION. Signed by JUDGE DERRICK K. WAT-

DATE	DOCKET NUMBER	PROCEEDINGS
		SON on 2/9/2017.—The Emergency Motion to Stay is GRANTED IN PART. This matter is stayed as long as the February 3, 2017 injunction entered in Washington v. Trump remains in full force and effect, or until further order of this Court. All further relief requested by the Emergency Motion to Stay is DENIED. Re: 23 Emergency MOTION to Stay Deadlines, 27 EO on Motion to Stay (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/09/2017)
		* * * * *
2/13/17	35	STATEMENT of No Position re 30 MOTION to Partially Lift Stay filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States

DATE	DOCKET NUMBER	PROCEEDINGS
		of America. (Rosenberg, Brad) (Entered: 02/13/2017)
2/13/17	36	EO: Upon consideration of the State of Hawaii's Motion to Partially Lift Stay ("Motion")(Dkt. No. 30), the Government's Statement of No Position (Dkt. No. 35), and good cause appearing therefor, the State's Motion is hereby GRANTED. The State may file (1) its Proposed First Amended Complaint, and (2) the Declaration of Clyde J. Wadsworth Regarding Exhibit C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order, both in the form previously submitted to the Court as exhibits to the Motion (see Dkt. Nos. 30-1 and 30-2). The State may do so no later than Wednesday, February 15, 2017. The Court's February 9, 2017 stay order (Dkt. No. 32) otherwise remains in place. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tyk)
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of

DATE	DOCKET NUMBER	PROCEEDINGS
		Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/13/2017)
2/13/17	37	FIRST AMENDED COMPLAINT *for Declaratory and Injunctive Relief* against All Defendants, filed by State of Hawaii. (Attachments: # 1 Certificate of Service) (Katyal, Neal) Modified docket text on 2/14/2017 (ecs,). (Entered: 02/13/2017)
2/14/17	38	Declaration *of Clyde J. Wadsworth Regarding Exhibit C to Declaration of Douglas S. Chin in Support of Plaintiff's Motion for Temporary Restraining Order.* (Attachments: # 1 Certificate of Service) (Wadsworth, Clyde) (Entered: 02/14/2017)
		* * * * *
2/15/17	40	EO: The Court hereby lifts the stay in this matter for the limited purpose of allowing the parties to file Motions to Appear Pro Hac Vice, Notices of Appearance of Counsel, and/or Applications to Practice, consistent with Local Rules 83.1(d) and (e). The Court's February 9,

DATE	DOCKET NUMBER	PROCEEDINGS
		2017 stay order (Dkt. No. 32) otherwise remains in place. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 02/15/2017)
		* * * * *
3/6/17	56	NOTICE by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America *of Filing of Executive Order* John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Exhibit A: New Executive Order)(Rosenberg, Brad) (Entered: 03/06/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/7/17	57	Joint MOTION for Entry of Proposed Briefing Schedule Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Proposed Order) (Katyal, Neal) (Entered: 03/07/2017)
3/7/17	58	MOTION to Lift Stay and for Leave to File a Second Amended Complaint Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Exhibit Proposed Second Amended Complaint, # 2 Exhibit Proposed Order, # 3 Certificate of Service)(Katyal, Neal) (Entered: 03/07/2017)
3/8/17	59	ORDER GRANTING PLAINTIFFS' 58 MOTION TO LIFT STAY AND FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT. Signed by JUDGE DERRICK K. WATSON on 3/8/2017. —The Court lifts the litigation stay imposed by the Orders dated February 7, 2017 (Dkt. No. 27) and February 9, 2017 (Dkt. No. []32). Plaintiffs STATE OF HAWAI'I and ISMAIL ELSHIKH may file a Second Amended Complaint in the form submitted to the Court as an exhibit to the Motion (Dkt.

DATE	DOCKET NUMBER	PROCEEDINGS
		No. 58-1). (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Attachment replaced on 3/8/2017, NEF regenerated: # 1 Main Document—PDF flattened) (ecs,). (Entered: 03/08/2017)
3/8/17	60	BRIEFING SCHEDULE ORDER. Signed by JUDGE DERRICK K. WATSON on 3/8/2017. Related doc: 57 (ecs,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Attachment

DATE	DOCKET NUMBER	PROCEEDINGS
		replaced on 3/8/2017, NEF regenerated: # 1 Main Document—PDF flattened) (ecs,). (Entered: 03/08/2017)
3/8/17	61	NOTICE of Hearing on 65 Plaintiff's Motion For Temporary Restraining Order set for 3/15/2017 @ 09:30 AM before JUDGE DERRICK K. WATSON. Counsel may participate by phone by notifying Judge Watson's Courtroom Manager (808-541-3073) by 3/14/2017 and providing the phone number where counsel may be reached at the time of the hearing. The Court will contact the parties via phone at the time of the hearing.(tyk)
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry. Modified on 3/9/2017 (tyk,). (Entered: 03/08/2017)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
3/8/17	64	AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF *(SECOND)* against John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America, filed by State of Hawaii, Ismail Elshikh. (Attachments: # 1 Exhibit 1—Copy of Executive Order dated 3/6/2017, # 2 Exhibit 2—Copy of Executive Order dated 1/27/2017, # 3 Exhibit 3—Collection of relevant Data for Hawaii, # 4 Exhibit 4—Tables for fiscal years 2005-2015, # 5 Exhibit 5—Copy of table of contents and executive summary, # 6 Exhibit 6—Copy of press release, # 7 Exhibit 7—Copy of transcript, # 8 Exhibit 8—Copy of Washington Post Article, # 9 Exhibit 9—Copy of this NBC News article, # 10 Exhibit 10—Copy of the draft DHS report, # 11 Exhibit 11—Final version of DHS report, # 12 Exhibit 12—Copy of NBC News article, # 13 Exhibit 13—Copy of Dissent Channel memorandum, # 14 Exhibit 14—Copy of DHS Q&A, # 15 Certificate of

DATE	DOCKET NUMBER	PROCEEDINGS
		Service) (Katyal, Neal) Docket title text added on 3/9/2017 (ecs,). (Entered: 03/08/2017)
3/8/17	65	MOTION for Temporary Restraining Order Neal Katyal appearing for Plaintiffs Ismail Elshikh, State of Hawaii (Attachments: # 1 Memorandum in Support of Plaintiffs' Motion for Temporary Restraining Order, # 2 Certificate of Word Count, # 3 Proposed Temporary Restraining Order, # 4 Certificate of Service)(Katyal, Neal) (Entered: 03/08/2017)
3/8/17	66	Declaration re 65 MOTION for Temporary Restraining Order . (Attachments: # 1 Exhibit A—Dec. of Ismail Elshikh, PhD, # 2 Exhibit B-1—Supp. Dec. of George Szigeti, # 3 Exhibit B-2—Orig. Dec. of George Szigeti, # 4 Exhibit C-1—Supp. Dec. of Luis P. Salaveria, # 5 Exhibit C-2—Orig. Dec. of Luis P. Salaveria, # 6 Exhibit D-1—Supp. Dec. of Risa E. Dickson, # 7 Exhibit D-2—Orig. Dec. of Risa E. Dickson, # 8 Exhibit E—Dec. of Hakim Ounsafi, # 9 Certificate of Service) (Katyal, Neal) (Entered: 03/08/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/10/17	94	ORDER OF RECUSAL. Magistrate Judge KENNETH J. MANSFIELD recused. Case reassigned to MAGISTRATE JUDGE KEVIN S.C. CHANG. Please reflect Civil Case No: CV 17-00050 DKW-KSC on all further filings. Signed by Magistrate Judge KENNETH J. MANSFIELD on 3/10/2017. (ecs,) CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/10/2017)
		* * * * *
3/13/17	145	MEMORANDUM in Opposition re 65 MOTION for Temporary Restraining Order filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America.

DATE	DOCKET NUMBER	PROCEEDINGS
		(Attachments: # 1 Exhibit A: March 6, 2017 Letter from DOJ and DHS to White House, # 2 Exhibit B: Department of State Q&As, # 3 Certificate of Service) (Rosenberg, Brad) (Entered: 03/13/2017)
		* * * * *
3/13/17	183	MOTION to Intervene by Defendant Vincent Lucas (Attachments: # 1 [PROPOSED] Intervenor Vincent Lucas's Cross Complaint against the State of Hawaii and Ismail Elshikh, Exh A - B, # 2 Mailing Documentation)(ecs,) [Note: Document received does not have an Original signature and no other copies provided to the court.] Modified on 3/16/2017 (ecs,). (Entered: 03/14/2017)
		* * * * *
3/13/17	189	MOTION to Intervene and to Dismiss and Enjoin Defendants by Intervenor Frederick Banks (Attachments: # 1 Mailing Documentation, # 2 Cover letter) [Note: No CV case number referenced on the Motion, however information as to the case is mentioned in the cover letter] (ecs,) (Entered: 03/14/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/14/17	190	EO: The Court is in receipt of the Motions to Intervene filed by Frederick Banks and Vincent Lucas. Dkt. Nos. 183 and 189. The Motions are DENIED. Neither Motion identifies a statutory right to intervene within the meaning of either Fed.R.Civ.P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede either Movant's ability to protect his rights or interests. Finally, neither Movant has a claim or defense that shares with the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of intervention. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tyk)

CERTIFICATE OF SERVICE

Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this

DATE	DOCKET NUMBER	PROCEEDINGS
		docket entry (Entered: 03/14/2017)
3/14/17	191	REPLY to Response to Motion re 65 MOTION for Temporary Restraining Order filed by State of Hawaii. (Attachments: # 1 Certificate of Word Count, # 2 Certificate of Service)(Katyal, Neal) (Entered: 03/14/2017)
		* * * * *
3/15/17	219	ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER 65. Signed by JUDGE DERRICK K. WATSON on 3/15/2017. (ecs,)
		CERTIFICATE OF SERVICE
		Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Main Document 219 replaced on 3/22/2017) (mta,). (Entered: 03/15/2017)
3/15/17	220	EP: Hearing held on 65 Plaintiffs' Motion For Temporary Restrain-

DATE	DOCKET NUMBER	PROCEEDINGS
		ing Order. Oral arguments heard. Motion taken under Advisement. Court to issue a written order. (Court Reporter Gloria Bediamol) (JUDGE DERRICK K. WATSON) (tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/15/2017)
		* * * * *
3/17/17	227	MOTION *for Clarification* re 219 Order on Motion for TRO, Brad P. Rosenberg appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Memorandum of Law in Support of Motion for Clarification, # 2 Certificate of Service)(Rosenberg, Brad) Modified on 3/20/2017 (emt,).

DATE	DOCKET NUMBER	PROCEEDINGS
		(Entered: 03/17/2017)
3/18/17	228	OPPOSITION to 227 MOTION *for Clarification* of TRO re 219 Order on Motion for TRO, filed by State of Hawaii. (Attachments: # 1 Certificate of Service)(Katyal, Neal) Modified on 3/20/2017 (emt,). (Entered: 03/18/2017)
3/19/17	229	EO: The Court is in receipt of the Federal Defendants' Motion for Clarification of TRO. Dkt. No. 227. That Motion essentially asks whether the Court's March 15, 2017 Temporary Restraining Order was intended to apply to Sections 2 and 6 of the Executive Order. The Motion, in other words, asks the Court to make a distinction that the Federal Defendants' previous briefs and arguments never did. As important, there is nothing unclear about the scope of the Court's order. See Dkt. No. 219 (TRO) at 42 ("Defendants . . . are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation."). The Federal Defendants' Motion is DENIED. (JUDGE DERRICK K. WATSON)(watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/19/2017)
3/19/17	230	EO: In light of the Court's TRO directing the parties to submit a certain "stipulated briefing and hearing schedule," the parties' briefs relating to the Federal Defendants' Motion for Clarification of TRO, and the Court's EO regarding the same (Dkt. No. 229), the parties are further directed to advise the Court whether a stipulated path has been reached regarding proceedings before this Court concerning a possible extension of the Court's TRO. If a status conference is necessary, the parties are requested to contact Tammy Kimura, Courtroom Manager, forthwith. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/19/2017)
3/19/17	231	Errata re 228 Response *to Mot. to Clarify*. (Attachments: # 1 Certificate of Service COS for Errata) (Marie-Iha, Deirdre) (Entered: 03/19/2017)
		* * * * *
3/20/17	235	Joint MOTION for Briefing Schedule Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Exhibit Proposed Order, # 2 Certificate of Service)(Katyal, Neal) (Entered: 03/20/2017)
3/20/17	236	EO: The Court is in receipt of the parties' Joint Motion For Entry Of Proposed Briefing Schedule Order For Plaintiffs' Forthcoming Motion to Convert Temporary Restraining Order to a Preliminary Injunction. Dkt. No. 235. The Court enters the

DATE	DOCKET NUMBER	PROCEEDINGS
		following briefing schedule: Plaintiffs shall file their Motion to Convert Temporary Restraining Order to a Preliminary Injunction ("Motion") by 9:30 A.M. H.S.T. on Tuesday, March 21, 2017. The Government shall file its Opposition by 9:30 A.M. H.S.T. on Friday, March 24, 2017. Plaintiffs shall file their Reply by 9:30 A.M. H.S.T. on Saturday, March 25, 2017. The Court will hold a hearing on Plaintiffs' forthcoming Motion at 9:30 A.M. H.S.T. on Wednesday, March 29, 2017. Counsel may participate by phone by notifying Judge Watson's Courtroom Manager by Tuesday, March 28, 2017 and providing the phone number where counsel may be reached at the time of the hearing. The Court will contact the parties via phone at the time of the hearing. The Court advises that the hearing date/time may be changed, or vacated, upon review of the briefs. Per the parties' stipulation, the Court's Temporary Restraining Order ("TRO") of March 15, 2017 (Dkt. No. 219) shall remain in place until such time as the Court

DATE	DOCKET NUMBER	PROCEEDINGS
		rules on whether the TRO should be converted to a preliminary injunction or until otherwise ordered by the Court. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/20/2017)
3/20/17	237	MOTION to Intervene ("Tertius Interveniens Notice of Lack of Standing of State of Hawaii to Challenge President's Executive Order (Travel Ban)); (FRCVP Rule 20(a)(2)(B) & 28 USC 1397)"—by Intervenor Eric Richard Eleson. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Certificate of Service, # 8 Mailing Documentation) (emt,) (Entered: 03/21/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
3/21/17	238	MOTION to Convert Temporary Restraining Order to Preliminary Injunction Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum, # 2 Exhibit Proposed Order, # 3 Certificate of Service)(Katyal, Neal) (Entered: 03/21/2017)
3/21/17	239	Declaration re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction *of Neal K. Katyal.* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Certificate of Service)(Katyal, Neal) (Entered: 03/21/2017)
3/21/17	240	EO: The Court is in receipt of a Motion to Intervene entitled, "Tertius Interveniens Notice of Lack of Standing of State of Hawaii to Challenge President's Executive Order (Travel Ban)" filed by Eric Richard Eleson. Dkt. No 237. The Motion is DENIED. The Motion identifies no statutory right to intervene within the meaning of either Fed.R.Civ.P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede Eleson's ability to protect his rights or interests. Eleson has no claim or defense that shares with

DATE	DOCKET NUMBER	PROCEEDINGS
		the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of intervention. Finally, to the extent Eleson seeks permissive joinder pursuant to Fed.R.Civ.P. 20(a)(2)(B), the Motion is likewise without merit. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tl,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/21/2017)
3/21/17	241	Mikki the Mime's MOTION to Intervene Pursuant to Fed.R.Civ.P. 24(a) and (b)—by Intervenor Joseph Camp. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Transmittal Letter, # 5 Mailing Documentation) (emt,) (Entered: 03/22/2017)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
3/22/17	243	EO: The Court is in receipt of a Motion to Intervene filed by Mikki the Mime. Dkt. No 241. The Motion is DENIED. The Motion identifies no statutory right to intervene within the meaning of either Fed.R.Civ.P. 24(a) or 24(b). Moreover, the disposition of this action will not impair or impede Movant's ability to protect her rights or interests. Finally, Movant has no claim or defense that shares with the main action a common question of law or fact sufficient for the Court to exercise its discretion in favor of intervention. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (tl,)

CERTIFICATE OF SERVICE

Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/22/2017)

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DATE	DOCKET NUMBER	PROCEEDINGS
3/24/17	251	MEMORANDUM in Opposition re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Sarsour v. Trump Slip Opinion, # 2 Washington v. Trump Order Containing Dissents)(Rosenberg, Brad) (Entered: 03/24/2017)
3/25/17	252	REPLY to Response to Motion re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction filed by Ismail Elshikh, State of Hawaii. (Attachments: # 1 Certificate of Word Count, # 2 Certificate of Service) (Katyal, Neal) (Entered: 03/25/2017)
3/25/17	253	Declaration re 252 Reply to Response to Motion, *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit D (DHS Fact Sheet), # 2 Exhibit E (DHS Q&A), # 3 Exhibit F (N.Y. Times Article), # 4 Certificate of Service)(Katyal, Neal) (Entered: 03/25/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/28/17	258	NOTICE *of Filing of Declaration of Lawrence E. Bartlett* by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America re 238 MOTION to Convert Temporary Restraining Order to Preliminary Injunction , 251 Memorandum in Opposition to Motion . (Attachments: # 1 Declaration of Lawrence E. Bartlett, # 2 Certificate of Service) (Rosenberg, Brad) Modified on 3/29/2017 (emt,). (Entered: 03/28/2017)
		* * * * *
3/29/17	270	ORDER GRANTING MOTION TO CONVERT TEMPORARY RESTRAINING ORDER TO A PRELIMINARY INJUNCTION re 238— Signed by JUDGE DERRICK K. WATSON on 3/29/2017. "It is hereby ADJUDGED, ORDERED, and DECREED that: Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in

DATE	DOCKET NUMBER	PROCEEDINGS
		active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court. No security bond is required under Federal Rule of Civil Procedure 65(c). The Court declines to stay this ruling or hold it in abeyance should an appeal of this order be filed." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 03/29/2017)
3/30/17	271	**NOTICE OF APPEAL** as to 219 Order on Motion for TRO,, 270 Order on Motion for Miscellaneous

DATE	DOCKET NUMBER	PROCEEDINGS
		Relief,,,,, by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Rosenberg, Brad) Modified on 3/30/2017 9CCA NO. 17-15589 (emt,). (Entered: 03/30/2017)
3/30/17	272	USCA Case Number 17-15589 for 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Parties served by Ninth Circuit Court of Appeals. (Entered: 03/30/2017)
		* * * * *
3/31/17	275	TRANSCRIPT of Proceedings Pltf. Mt. for TRO held on March 15, 2017, —before Judge Derrick K. Watson. Court Reporter/Transcriber Gloria T. Bediamol, Telephone number (808) 541-2060. 90-Day Transcript Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Cita-

DATE	DOCKET NUMBER	PROCEEDINGS
		tions to restricted transcripts in filed documents must be limited to those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/18/2017. Redacted Transcript Deadline set for 4/28/2017. Release of Transcript Restriction set for 6/26/2017. pp. 55. (gb@hid.uscourts.gov) (Entered: 03/31/2017)
3/31/17	276	TRANSCRIPT of Proceedings Mt. to convert TRO to PI held on March 29, 2017,—before Judge Derrick K. Watson. Court Reporter/Transcriber Gloria T. Bediamol, Telephone number (808) 541-2060. 90-Day Transcript Restriction: PACER access to filed transcripts is restricted for 90 days from the file date to permit redaction of personal identifiers. Citations to restricted transcripts in filed documents must be limited to

DATE	DOCKET NUMBER	PROCEEDINGS
		those portions of the proceedings that are relevant and in need of judicial review. Attaching restricted transcripts, in their entirety, to filed documents should be limited to situations with specific need. Transcript may be viewed at the court public terminal or ordered through the Court Reporter before the deadline for Release of Transcript. Redaction Request due 4/18/2017. Redacted Transcript Deadline set for 4/28/2017. Release of Transcript Restriction set for 6/26/2017. pp. 45. (gb@hid.uscourts.gov) (Entered: 03/31/2017)
3/31/17	277	Joint MOTION to Stay *District Court Proceedings Pending Resolution of Defendants' Appeal* Brad P. Rosenberg appearing for Defendants John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America (Attachments: # 1 Proposed Order, # 2 Certificate of Service) (Rosenberg, Brad) (Entered: 04/03/2017)
4/3/17	278	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Depart-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "Appellants' unopposed motion to expedite the briefing and consideration of a motion to stay and to expedite the briefing and consideration of the merits of this preliminary injunction appeal (Docket Entry No. 12) is granted. The briefing schedule shall proceed as follows: the opening brief and the motion for a stay pending appeal are due April 7, 2017; the answering brief and the response to the motion for a stay pending appeal are due April 21, 2017; and the optional reply brief and the reply in support of the motion for a stay pending appeal are due April 28, 2017. Any amicus briefs are due April 21, 2017. The parties' request for expedited argument is granted. This case shall be heard on the calendar for May 2017, taking into account the limited dates the parties have advised they are available for argument."

DATE	DOCKET NUMBER	PROCEEDINGS
		(emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 04/03/2017)
4/3/17	279	ORDER re 277—Signed by JUDGE DERRICK K. WATSON on 4/3/2017. "All deadlines in this case, including the Defendants' deadline to file a response to the Second Amended Complaint, the parties' deadline to file a Scheduling Conference Statement pursuant to Rule 16.2(b), and the deadline to hold a conference pursuant to Rule 26.1(a), are hereby **STAYED.** The Court also hereby CONTINUES the Rule 16 Scheduling Conference that had been set for April 18, 2017. **It is further ORDERED that the parties shall submit, within fourteen days of the final disposition of appellate proceedings, a joint status report proposing the schedule for any further proceedings in this matter."** Motion terminated: 277 Joint MOTION to Stay *District Court Proceedings Pending Resolution of*

DATE	DOCKET NUMBER	PROCEEDINGS
		Defendants' Appeal filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 04/03/2017)
4/3/17	280	EO: Rule 16 Scheduling Conference set for 4/18/2017 before Magistrate Judge Kevin Chang is hereby vacated. Refer to [ECF No. 279] Order issued by Judge Derrick K. Watson. (MAGISTRATE JUDGE KEVIN S.C. CHANG)(lls,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Partici-

DATE	DOCKET NUMBER	PROCEEDINGS
		pants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 04/03/2017)
		* * * * *
4/21/17	285	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: " . . . initial en banc proceedings are concluded, and all remaining issues will be decided by the three-judge panel." "This case is scheduled for oral argument before the three-judge panel at 9:30 a.m. on Monday, May 15, 2017, in Seattle Washington." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 04/21/2017)
5/24/17	286	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of

DATE	DOCKET NUMBER	PROCEEDINGS
		Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "Plaintiffs-Appellees' motion for leave to supplement the record is GRANTED." (emt,)
		CERTIFICATE OF SERVICE Parties served by Ninth Circuit Court of Appeals. (Entered: 05/24/2017)
6/9/17	287	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "The Law Professors' motion for leave to file a brief as amici curiae, see Dkt.208, is granted." (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 06/09/2017)
6/12/17	288	OPINION of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of

DATE	DOCKET NUMBER	PROCEEDINGS
		Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "We affirm in part and vacate in part the district court's preliminary injunction order. As to the remaining Defendants, we affirm the injunction as to Section 2(c), suspending entry of nationals from the six designated countries for 90 days; Section 6(a), suspending USRAP for 120 days; and Section 6(b), capping the entry of refugees to 50,000 in the fiscal year 2017. We vacate the portions of the injunction that prevent the Government from conducting internal reviews, as otherwise directed in Sections 2 and 6, and the injunction to the extent that it runs against the President. We remand the case to the district court with instructions to re-issue a preliminary injunction consistent with this opinion. **AFFIRMED in part; VACATED in part; and REMANDED with Instructions.** Each party shall bear its own costs on appeal."

DATE	DOCKET NUMBER	PROCEEDINGS
		(emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 06/13/2017)
6/19/17	289	ORDER of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "The Government's consent motion to issue the mandate, Dkt. No. 316, is GRANTED. The mandate shall issue immediately." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
6/19/17	290	MANDATE of USCA as to 271 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-15589: "The judgment of this Court, entered June 12, 201 7, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)
6/19/17	291	AMENDED PRELIMINARY INJUNCTION. Signed by JUDGE DERRICK K. WATSON on 06/19/2017.

DATE	DOCKET NUMBER	PROCEEDINGS
		(eps,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/19/2017)
6/27/17	292	Appeal Remark re 271 Notice of Appeal, 9CCA NO. 17-15589 : Letter addressed to the Ninth Circuit Court of Appeals from the Supreme Court of the United States, dated June 26, 2017 Re: "The petition for a writ of certiorari in the above entitled case was filed on June 26, 2017 and placed on the docket June 26, 2017 as No. 16-1540." (emt,)No COS issued for this docket entry (Entered: 06/27/2017)
6/29/17	293	Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Mem-

DATE	DOCKET NUMBER	PROCEEDINGS
		orandum Memorandum of Law in Support of Emergency Motion to Clarify, # 2 Exhibit Proposed Order, # 3 Certificate of Service)(Katyal, Neal) (Entered: 06/29/2017)
6/29/17	294	Declaration of Neal K. Katyal in Support of 293 Plaintiff's Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, . (Attachments: # 1 Exhibit Ex. A, # 2 Exhibit Ex. B, # 3 Exhibit Ex. C, # 4 Exhibit Ex. D, # 5 Exhibit Ex. E, # 6 Certificate of Service)(Katyal, Neal) Modified on 6/30/2017 (emt,). (Entered: 06/29/2017)
6/29/17	295	EO: The Court partially lifts the April 3, 2017 stay in this matter for the limited purpose of considering Plaintiffs' Emergency Motion to Clarify Scope of Preliminary Injunction. Dkt. No. 293 . Defendants shall file their opposition, limited to 20 pages, by Monday, July 3, 2017. Plaintiffs shall file any reply, limited to 15 pages, by Thursday, July 6, 2017. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 06/29/2017)
		* * * * *
7/3/17	301	MEMORANDUM in Opposition re 293 Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Attachments: # 1 Declaration of Lawrence E. Bartlett & Att. 1-3, # 2 Exhibit A: Department of State FAQs, # 3 Exhibit B: Emails from Rosenberg to Katyal, # 4 Exhibit C: Department of State Fact Sheet re Refugee Program, # 5 Exhibit D: Department of Homeland Security FAQs, # 6 Certificate of Service) (Rosen-

DATE	DOCKET NUMBER	PROCEEDINGS
		berg, Brad) (Entered: 07/03/2017)
		* * * * *
7/5/17	303	REPLY re 293 Emergency MOTION to Clarify Scope of Preliminary Injunction re 291 Preliminary Injunction, filed by State of Hawaii. (Attachments: # 1 Exhibit Proposed Order, # 2 Certificate of Service)(Katyal, Neal) (Entered: 07/05/2017)
7/5/17	304	Declaration re 303 Reply, *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit F, # 2 Exhibit G, # 3 Exhibit H, # 4 Exhibit I, # 5 Certificate of Service)(Katyal, Neal) (Entered: 07/05/2017)
		* * * * *
7/5/17	315	Errata re 303 Reply, *Proposed Order.* (Attachments: # 1 Errata Proposed Order, # 2 Certificate of Service)(Katyal, Neal) (Entered: 07/05/2017)
		* * * * *
7/6/17	322	ORDER DENYING PLAINTIFFS' EMERGENCY MOTION TO CLARIFY SCOPE OF PRELIMINARY

DATE	DOCKET NUMBER	PROCEEDINGS
		INJUNCTION re 293— Signed by JUDGE DERRICK K. WATSON on 7/6/2017. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/06/2017)
		* * * * *
7/6/17	324	NOTICE OF APPEAL as to 322 Order on Motion for Miscellaneous Relief,, by State of Hawaii. Filing fee $ 505, receipt number 0975-1895381. (Attachments: # 1 Exhibit Representation Statement, # 2 Certificate of Service) (Katyal, Neal) Modified on 7/7/2017 9CCA NO. 17-16366 (emt,). (Entered: 07/06/2017)
7/6/17	325	USCA Case Number 17-16366 for 324 Notice of Appeal filed by State

DATE	DOCKET NUMBER	PROCEEDINGS
		of Hawaii. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/07/2017)
		* * * * *
7/7/17	327	ORDER of USCA as to 324 Notice of Appeal, filed by State of Hawaii, 9CCA NO. 17-16366: This appeal is DISMISSED for lack of jurisdiction. Plaintiffs' "Emergency Motion under FRAP 8 and Circuit Rule 27-3 for Injunction Pending Appeal" is DENIED as moot. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/07/2017)
7/7/17	328	MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, Neal Katyal appearing for Plaintiff State of Hawaii (Attachments: # 1 Memorandum, # 2 Exhibit Proposed Order on

DATE	DOCKET NUMBER	PROCEEDINGS
		Motion to Enforce Preliminary Injunction, # 3 Exhibit Proposed Order Modifying Preliminary Injunction, # 4 Certificate of Service) (Katyal, Neal) (Entered: 07/07/2017)
7/7/17	329	Declaration re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, *of Neal K. Katyal.* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Certificate of Service)(Katyal, Neal) (Entered: 07/07/2017)
7/8/17	330	EO: The Court is in receipt of Plaintiffs' Motion to Enforce or, In the Alternative, to Modify Preliminary Injunction. Dkt. No. 328. Defendants shall file their opposition by Tuesday, July 11, 2017. Plaintiffs shall file any reply by Wednesday, July 12, 2017. The parties' opposition and reply briefs are limited to no more than 15 pages each. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON) (watson1)

DATE	DOCKET NUMBER	PROCEEDINGS
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/08/2017)
		* * * * *
7/10/17	335	EO: The Court partially lifts the April 3, 2017 stay in this matter for the limited purpose of considering Plaintiffs' Motion to Enforce or, In the Alternative, to Modify Preliminary Injunction. Dkt. No. 328. IT IS SO ORDERED. (JUDGE DERRICK K. WATSON)(tyk)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/10/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/11/17	338	MEMORANDUM in Opposition re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, filed by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United States of America. (Rosenberg, Brad) (Entered: 07/11/2017)
		* * * * *
7/12/17	342	REPLY re 328 MOTION to Enforce or, In the Alternative, to Modify Preliminary Injunction re 291 Preliminary Injunction, filed by State of Hawaii. (Attachments: # 1 Certificate of Service)(Katyal, Neal) (Entered: 07/12/2017)
7/12/17	343	Declaration re 342 Reply *Supplemental Declaration of Neal K. Katyal.* (Attachments: # 1 Exhibit G, # 2 Exhibit H, # 3 Exhibit I, # 4 Certificate of Service)(Katyal, Neal) (Entered: 07/12/2017)
7/13/17	344	Declaration re 342 Reply *Third Declaration of Neal K. Katyal.* (Attach-

DATE	DOCKET NUMBER	PROCEEDINGS
		ments: # 1 Exhibit J, # 2 Exhibit K, # 3 Exhibit L, # 4 Certificate of Service)(Katyal, Neal) (Entered: 07/13/2017)
7/13/17	345	ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO ENFORCE, OR, IN THE ALTERNATIVE, TO MODIFY PRELIMINARY INJUNCTION re 328—Signed by JUDGE DERRICK K. WATSON on 7/13/2017. (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/13/2017)
7/14/17	346	NOTICE OF APPEAL as to 345 Order on Motion for Miscellaneous Relief,, by John F. Kelly, Rex Tillerson, Donald J. Trump, U.S. Department of Homeland Security, U.S. Department of State, United

DATE	DOCKET NUMBER	PROCEEDINGS
		States of America. 9CCA NO. 17-16426 (Bennett, Michelle) Modified on 7/14/2017 (emt,). (Entered: 07/14/2017)
7/14/17	347	USCA Case Number 17-16426 for 346 Notice of Appeal filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump. (emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/14/2017)
		* * * * *
7/19/17	349	Appeal Remark re 271 Notice of Appeal, re 9CCA NO. 17-15589 : ORDER issued by the U.S. Supreme Court (16-1540) ~ "The Government's motion seeking clarification of our order of June 26, 2017, is denied. The District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance is stayed pending resolution of the Gov-

DATE	DOCKET NUMBER	PROCEEDINGS
		ernment's appeal to the Court of Appeals for the Ninth Circuit." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/19/2017)
7/19/17	350	Appeal Remark re 346 Notice of Appeal, re 9CCA NO. 17-16426 : ORDER issued by the U.S. Supreme Court (16-1540) ~ "The Government 's motion seeking clarification of our order of June 26, 2017, is denied. The District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance is stayed pending resolution of the Government's appeal to the Court of Appeals for the Ninth Circuit." (emt,)
		CERTIFICATE OF SERVICE Participants registered to receive

DATE	DOCKET NUMBER	PROCEEDINGS
		electronic notifications received this document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). Participants not registered to receive electronic notifications were served by first class mail on the date of this docket entry (Entered: 07/19/2017)
		* * * * *
7/24/17	352	ORDER of USCA as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump, 9CCA NO. 17-16426: "The Government's motion to stay pending appeal, Dkt. No. 3, is denied as moot. The briefing schedule entered at Dkt. No. 2 is vacated. The parties' joint motion to expedite the briefing and consideration of the merits of this appeal, Dkt. No. 6, is granted." emt,)
		CERTIFICATE OF SERVICE Parties served by the Ninth Circuit Court of Appeals. (Entered: 07/24/2017)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
7/28/17	354	ORDER of USCA CA No. 17-16426 as to 346 Notice of Appeal, filed by U.S. Department of State, U.S. Department of Homeland Security, Rex Tillerson, John F. Kelly, United States of America, Donald J. Trump The Court has received an Emergency Motion to Intervene (Dkt. #10). Any response shall be filed on or before 12:00 p.m. PST, Wednesday, August 2, 2017. Proposed-Intervenor may file a reply on or before 12:00 p.m. PST, Thursday, August 3, 2017. (eps,) CERTIFICATE OF SERVICE Participants served by 9CCA (Entered: 07/28/2017)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 17-15589

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
3/30/17	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: to be set. Preliminary Injunction Appeal. Circuit Rule 3-3. [10378209] (RT) [Entered: 03/30/2017 04:20 PM]
		* * * * *
3/31/17	12	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS Unopposed Motion to expedite case. Date of service: 03/31/2017. [10379547] [17-15589] (Swingle, Sharon)

DATE	DOCKET NUMBER	PROCEEDINGS
		[Entered: 03/31/2017 02:46 PM]
		* * * * *
4/3/17	14	Filed order (BARRY G. SILVERMAN, M. MARGARET MCKEOWN and ANDREW D. HURWITZ) Appellants' unopposed motion to expedite the briefing and consideration of a motion to stay and to expedite the briefing and consideration of the merits of this preliminary injunction appeal (Docket Entry No. [12]) is granted. The briefing schedule shall proceed as follows: the opening brief and the motion for a stay pending appeal are due April 7, 2017; the answering brief and the response to the motion for a stay pending appeal are due April 21, 2017; and the optional reply brief and the reply in support of the motion for a stay pending appeal are due April 28, 2017. Any amicus briefs are due April 21, 2017. The parties' request for expedited argument is granted. This case shall be heard on the calendar for May 2017, taking into account the limited dates the parties have advised they are available for argument. See 9th Cir. Gen. Order 3.3(g). This case shall

DATE	DOCKET NUMBER	PROCEEDINGS
		be heard by a panel composed of three members of this court. See 9th Cir. Gen. Order 3.3(h). [10381034] (ME) [Entered: 04/03/2017 01:18 PM]
		* * * * *
4/4/17	18	Notice of Oral Argument on Monday, May 15, 2017—09:30 A.M.—SE 7th Flr Courtroom 2—Seattle WA. View the Oral Argument Calendar for your case here. Be sure to review the GUIDELINES for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible). When you have reviewed the calendar, download the ACKNOWLEDGMENT OF HEARING NOTICE form, complete the form, and file it via Appellate ECF or return the completed form to: SEATTLE Office. [10382890] (AW) [Entered: 04/04/2017 01:13 PM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/6/17	20	Filed (ECF) Plaintiffs in Ali v. Trump, 2:17-cv-00135 (W.D.Wash.) Motion to intervene. Date of service: 04/06/2017. [10387252] [17-15589] (Adams, Matt) [Entered: 04/06/2017 04:40 PM]
		* * * * *
4/7/17	22	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS Motion to stay lower court action. Date of service: 04/07/2017. [10388981] [17-15589] (Swingle, Sharon) [Entered: 04/07/2017 05:02 PM]
4/7/17	23	Submitted (ECF) Opening Brief for review. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 04/07/2017. [10388990] [17-15589]—[COURT UPDATE: Attached corrected brief (statement of related cases added). 04/10/2017 by LA] (Swingle, Sharon) [Entered: 04/07/2017 05:06 PM]
4/7/17	24	Submitted (ECF) excerpts of record. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald

DATE	DOCKET NUMBER	PROCEEDINGS
		J. Trump, U.S. Department of State, USA and USDHS. Date of service: 04/07/2017. [10388991] [17-15589] (Swingle, Sharon) [Entered: 04/07/2017 05:08 PM]
		* * * * *
4/10/17	29	Filed clerk order (Deputy Clerk: AF): Plaintiffs-Intervenors ("Ali Plaintiffs") have filed a motion for leave to intervene in this appeal. Dkt. [20]. Their motion indicates that counsel for the State of Hawaii and Ismail Elshikh take no position on the motion and that counsel for the federal government oppose the motion. Ordinarily, a party filing a response to a motion must do so within 10 days after service of the motion. Fed. R. App. P. 27. Given the expedited briefing and oral argument schedule set in this case, the Court shortens the deadline to respond. The parties may file a response to the Ali Plaintiffs' motion to intervene no later than April 12, 2017. [10389403] (AF) [Entered: 04/10/2017 09:21 AM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/10/17	34	Filed clerk order: The opening brief [23] submitted by appellants is filed. Appellants are ordered to file 7 copies of the brief in paper format for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, April 11, 2017, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [24] submitted by appellants. Appellants are ordered to file 4 copies of the excerpts in paper format, with a white cover, for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, April 11, 2017. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10389531] (LA) [Entered: 04/10/2017 10:05 AM]
		* * * * *
4/11/17	52	Filed (ECF) Appellees State of Hawaii and Ismail Elshikh Motion for miscellaneous relief [Petition for

DATE	DOCKET NUMBER	PROCEEDINGS
		initial hearing en banc.]. Date of service: 04/11/2017. [10392720] [17-15589] (Katyal, Neal) [Entered: 04/11/2017 05:15 PM]
4/12/17	53	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS response opposing motion ([20] Motion (ECF Filing), [20] Motion (ECF Filing) motion to intervene). Date of service: 04/12/2017. [10392989] [17-15589] (Swingle, Sharon) [Entered: 04/12/2017 09:40 AM]
4/12/17	54	Filed clerk order (Deputy Clerk: OC): Plaintiffs-Intervenors (the "Ali Plaintiffs") have filed a motion for leave to intervene in this appeal. Dkt. [20]. The Ali Plaintiffs may file a reply to any party's opposition briefing, but this must be expedited: Any optional reply in support of the motion shall be filed no later than Friday, April 14, 2017.[10393781] (OC) [Entered: 04/12/2017 03:02 PM]
		* * * * *
4/14/17	56	Filed (ECF) Intervenor—Pending Ali Plaintiffs reply to response

DATE	DOCKET NUMBER	PROCEEDINGS
		(motion to intervene,). Date of service: 04/14/2017. [10397544] [17-15589] (Adams, Matt) [Entered: 04/14/2017 06:30 PM]
4/14/17	57	Filed (ECF) Plaintiffs in Doe v. Trump, 2:17-cv-00178 (W.D. Wash.) —Joseph Doe, James Doe, and the Episcopal Diocese of Olympia Motion to intervene. Date of service: 04/14/2017. [10397563] [17-15589] —[COURT UPDATE: Edited docket text to reflect correct party filers per motion. 04/17/2017 by RY] (Sarko, Lynn) [Entered: 04/14/2017 11:11 PM]
		* * * * *
4/17/17	61	Filed clerk order (Deputy Clerk: WL): Plaintiffs-Intervenors (the "Doe Plaintiffs") have filed a motion for leave to intervene in this appeal. Dkt. No. [57]. Their motion indicates that counsel for the State of Hawaii and Ismail Elshikh take no position on the motion and that counsel for the federal government oppose the motion. Ordinarily, a party filing a response to a motion must do so within 10 days after service of the motion, and a party

DATE	DOCKET NUMBER	PROCEEDINGS
		filing a reply must due so within 7 days after service of the response. Fed. R. App. P. 27. Given the expedited briefing and oral argument schedule set in this case, the Court shortens the deadline to respond and reply. The parties may file a response to the Doe Plaintiffs' motion to intervene no later than Wednesday, April 19, 2017. The Doe Plaintiffs may file an optional reply in support of their motion no later than Friday, April 21, 2017. [10399041] (AF) [Entered: 04/17/2017 03:30 PM]
		* * * * *
4/19/17	76	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS response opposing motion ([57] Motion (ECF Filing), [57] Motion (ECF Filing) motion to intervene). Date of service: 04/19/2017. [10402576] [17-15589] (Swingle, Sharon) [Entered: 04/19/2017 01:26 PM]
		* * * * *
4/20/17	115	Filed (ECF) Intervenors—Pending James Doe, Joseph Doe and Epis-

DATE	DOCKET NUMBER	PROCEEDINGS
		copal Diocese of Olympia reply to response (motion to intervene). Date of service: 04/20/2017. [10404566] [17-15589] (Sarko, Lynn) [Entered: 04/20/2017 01:27 PM]
		* * * * *
4/21/17	184	Filed Order for PUBLICATION (SIDNEY R. THOMAS) The full court was advised of the petition for initial hearing en banc. A judge requested a vote on whether to hear the matter en banc before the limited en banc court. Another judge requested a vote on whether to hear the matter en banc before the full court. The matter failed to receive a majority of the votes of the non-recused active judges in favor of initial en banc consideration. Fed. R. App. P 35. Therefore, initial en banc proceedings are concluded, and all remaining issues will be decided by the three-judge panel. The denial of the request for initial hearing en banc does not preclude any party from filing a petition for rehearing en banc pursuant to the applicable rules following issuance of the panel opinion. This case is scheduled for oral argument before

DATE	DOCKET NUMBER	PROCEEDINGS
		the three-judge panel at 9:30 a.m. on Monday, May 15, 2017, in Seattle Washington. [10406467] (RMM) [Entered: 04/21/2017 01:47 PM]
		* * * * *
4/21/17	203	Filed clerk order (Deputy Clerk: OC): The Ali Plaintiffs' motion to intervene, Dkt. No. [20], and the Doe Plaintiffs' motion to intervene, Dkt. No. [57], are denied for the purposes of this expedited appeal only. See Bates v. Jones, 127 F.3d 870, 873 (9th Cir. 1997) ("Intervention at the appellate stage is . . . unusual and should ordinarily be allowed only for imperative reasons." (internal quotation marks omitted)); Fed. R. Civ. P. 24(a)(2) (intervention as of right must be given where "disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest"); Fed. R. Civ. P. 24(b)(3). The interests of the Ali Plaintiffs may be pursued through their case, Ali v. Trump, No. 2:17-cv-00135-JLR (W.D. Wash. filed Jan. 30, 2017), and possibly on appeal to our court. The same goes for the Doe Plaintiffs, who may

DATE	DOCKET NUMBER	PROCEEDINGS
		protect their interests in their case, Doe v. Trump, No. 2:17-cv-00178-JLR (W.D. Wash. filed Feb. 7, 2017). Although "[t]he prospect of stare decisis may, under certain circumstances, supply the requisite practical impairment warranting intervention as of right," United States v. Stringfellow, 783 F.2d 821, 826 (9th Cir. 1986), vacated on other grounds, 480 U.S. 370 (1987), the outcome of this appeal will not "for all practical purposes . . . foreclose" the Ali and Doe Plaintiffs' claims, Blake v. Pallan, 554 F.2d 947, 954 (9th Cir. 1977). See In re Estate of Ferdinand E. Marcos Human Rights Litig., 536 F.3d 980, 986 (9th Cir. 2008) (noting that a non-party's concerns about the precedential effect of an opinion may not warrant intervention). The Ali and Doe Plaintiffs may file briefs as amici curiae no later than Wednesday, April 26, 2017. [10406960] (OC) [Entered: 04/21/2017 04:16 PM]
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4/21/17	216	Filed (ECF) Appellees Isma Elshikh and State of Hawaii response opposing motion ([22] Motion (ECF Fil-

DATE	DOCKET NUMBER	PROCEEDINGS
		ing), [22] Motion (ECF Filing) motion to stay lower court action). Date of service: 04/21/2017. [10407174] [17-15589] (Katyal, Neal) [Entered: 04/21/2017 06:08 PM]
4/21/17	217	Submitted (ECF) Answering Brief for review. Submitted by Appellees State of Hawaii and Ismail Elshikh. Date of service: 04/21/2017. [10407177] [17-15589] —[COURT UPDATE: Attached corrected brief. 4/24/2017 by TYL] (Katyal, Neal) [Entered: 04/21/2017 06:11 PM]
4/21/17	218	Submitted (ECF) supplemental excerpts of record. Submitted by Appellees State of Hawaii and Ismail Elshikh. Date of service: 04/21/2017. [10407178] [17-15589] (Katyal, Neal) [Entered: 04/21/2017 06:13 PM]
		* * * * *
4/24/17	238	Filed clerk order: The answering brief [217] submitted by Ismail Elshikh and State of Hawaii is filed. Appellees are ordered to file 7 copies of the brief in paper format for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, April 25,

DATE	DOCKET NUMBER	PROCEEDINGS
		2017, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [218] submitted by Ismail Elshikh and State of Hawaii. Appellees are ordered to file 4 copies of the excerpts in paper format, with a white cover, for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, April 25, 2017 The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10408095] (KT) [Entered: 04/24/2017 11:53 AM]
		* * * * *
4/28/17	281	Submitted (ECF) Reply Brief for review. Submitted by Appellants Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA, USDHS and John F. Kelly. Date of service: 04/28/2017. [10416088] [17-15589] (Murphy, Anne) [Entered:

DATE	DOCKET NUMBER	PROCEEDINGS
		04/28/2017 07:06 PM]
4/28/17	282	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS reply to response (). Date of service: 04/28/2017. [10416089] [17-15589] (Murphy, Anne) [Entered: 04/28/2017 07:12 PM]
		* * * * *
5/1/17	284	Filed clerk order: The reply brief [281] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format for delivery to the Court by 12:00 p.m. Pacific time on Tuesday, May 2, 2017, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10416515] (LA) [Entered: 05/01/2017 10:20 AM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
5/2/17	288	Filed clerk order (Deputy Clerk: OC): This case is scheduled for oral argument before a three-judge panel at 9:30 a.m. on Monday, May 15, 2017, in Seattle, Washington. Each side is allocated 30 minutes per side. Please note that this is a change in the minutes assigned for oral argument. [10418746] (OC) [Entered: 05/02/2017 11:55 AM]
		* * * * *
5/15/17	304	ARGUED AND SUBMITTED TO MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ. [10434008] (SB) [Entered: 05/15/2017 11:18 AM]
5/15/17	305	Filed Audio recording of oral argument. **Note:** Video recordings of public argument calendars are available on the Court's website, at http://www.ca9.uscourts.gov/media/ [10435657] (SB) [Entered: 05/16/2017 09:42 AM]
5/18/17	306	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS citation of supple-

DATE	DOCKET NUMBER	PROCEEDINGS
		mental authorities. Date of service: 05/18/2017. [10440536] [17-15589] (Swingle, Sharon) [Entered: 05/18/2017 03:20 PM]
5/19/17	307	Filed (ECF) Appellees State of Hawaii and Ismail Elshikh Motion to supplement record on appeal. Date of service: 05/19/2017. [10441693] [17-15589] (Katyal, Neal) [Entered: 05/19/2017 01:33 PM]
5/19/17	308	Filed (ECF) Appellees Ismail Elshikh and State of Hawaii citation of supplemental authorities. Date of service: 05/19/2017. [10441854] [17-15589] (Sinzdak, Colleen) [Entered: 05/19/2017 02:14 PM]
5/24/17	309	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) Plaintiffs-Appellees' motion for leave to supplement the record is GRANTED. Plaintiffs-Appellees have advised that Defendants-Appellants do not oppose the motion but that they intend to file a response to the motion, addressing the relevance of the material to the issues before the Court. Defendants-Appellants may file such a response without further leave of the Court. [10446417] (OC)

DATE	DOCKET NUMBER	PROCEEDINGS
		[Entered: 05/24/2017 09:26 AM]
5/25/17	310	Filed (ECF) Appellants USDHS, John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State and USA response to motion ([307] Motion (ECF Filing), [307] Motion (ECF Filing) motion to supplement record on appeal). Date of service: 05/25/2017. [10448867] [17-15589] (Swingle, Sharon) [Entered: 05/25/2017 02:07 PM]
5/25/17	311	Filed (ECF) Appellees State of Hawaii and Ismail Elshikh citation of supplemental authorities. Date of service: 05/25/2017. [10449368] [17-15589] (Katyal, Neal) [Entered: 05/25/2017 04:15 PM]
6/9/17	312	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) The Law Professors' motion for leave to file a brief as amici curiae, see Dkt. [208], is granted. [10467727] (OC) [Entered: 06/09/2017 04:39 PM]
		* * * * *
6/12/17	314	FILED PER CURIAM OPINION (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICH-

DATE	DOCKET NUMBER	PROCEEDINGS
		ARD A. PAEZ) The Government's motion for a stay pending appeal is DENIED as moot. AFFIRMED in part; VACATED in part; and REMANDED with instructions. Each party shall bear its own costs on appeal. FILED AND ENTERED JUDGMENT. [10468371]—[Edited: attached PDF of WebCites. 06/16/2017 by RY] (RMM) [Entered: 06/12/2017 10:00 AM]
		* * * * *
6/13/17	316	Filed (ECF) Appellants USDHS, USA, U.S. Department of State, Donald J. Trump, Rex W. Tillerson and John F. Kelly Unopposed Motion for miscellaneous relief [Consent Motion To Issue The Mandate]. Date of service: 06/13/2017. [10472085] [17-15589] (Byron, H. Thomas) [Entered: 06/13/2017 05:43 PM]
6/19/17	317	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) The Government's consent motion to issue the mandate, Dkt. No. [316], is GRANTED. The mandate shall

DATE	DOCKET NUMBER	PROCEEDINGS
		issue immediately. [10479792] (OC) [Entered: 06/19/2017 04:27 PM]
6/19/17	318	MANDATE ISSUED.(MDH, RMG and RAP) [10479819] (MT) [Entered: 06/19/2017 04:38 PM]
6/27/17	319	**Supreme Court Case Info** Case number: 16-1540 Filed on: 06/26/2017 Cert Petition Action 1: Pending [10490185] (RR) [Entered: 06/27/2017 04:54 PM]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 17-16366

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLANTS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLEES

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/6/17	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. 9th Circuit Rule 3-3 Preliminary Injunction Appeal. [10500168] (HH) [Entered: 07/06/2017 10:29 PM]
7/7/17	2	Filed (ECF) Appellants State of Hawaii and Ismail Elshikh EMERGENCY Motion for injunction pending appeal. Date of service: 07/07/2017. [10500624] [17-16366] (Katyal, Neal) [Entered: 07/07/2017 10:27 AM]
7/7/17	3	Order filed (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ) This is

DATE	DOCKET NUMBER	PROCEEDINGS
		an appeal of the district court's July 6, 2017 denial of Plaintiffs' "Emergency Motion to Clarify Scope of Preliminary Injunction." Plaintiffs requested that the district court "clarify the scope of the Court's June 19, 2017 amended preliminary injunction." The district court denied the clarification motion, explaining that, because it was the Supreme Court—not the district court—that issued the June 26, 2017 order staying in part the district court's preliminary injunction, clarification of the June 26 order must be sought from the Supreme Court. Plaintiffs have filed an emergency motion requesting that this court enjoin the Government from violating the Supreme Court's June 26 order or directing the district court to do so. We lack jurisdiction to address Plaintiffs' appeal of the district court's order denying the motion to clarify the scope of the injunction. This court possesses jurisdiction to review only final judgments and a limited set of interlocutory orders. See 28 U.S.C. §§ 1291, 1292(a). The district court's

DATE	DOCKET NUMBER	PROCEEDINGS
		order neither resulted in a final judgment nor engaged in action deemed immediately appealable in 28 U.S.C. § 1292(a). Specifically, the district court's order did not "grant[], continu[e], modify[], refus[e], or dissolv[e]" an injunction, or "refus[e] to dissolve or modify" an injunction. Id. § 1291(a)(1). Nor do any of the various judicially-crafted bases for appellate jurisdiction apply under these circumstances. Because the "practical effect" of Plaintiffs' requested relief is declaratory in nature—not injunctive—we do not construe their clarification motion before the district court as one for injunctive relief. See, e.g., Alsea Valley All. v. Dep't of Commerce, 358 F.3d 1181, 1186 (9th Cir. 2004). And this scenario does not present an order of "practical finality" because—as discussed below—Plaintiffs may seek injunctive relief from the district court. Cf. Nehmer v. U.S. Dep't of Veterans Affairs, 494 F.3d 846, 856 n.5 (9th Cir. 2007); All Alaskan Seafoods, Inc. v. M/V Sea Producer, 882 F.2d 425, 428 n.2 (9th Cir. 1989). Because we lack

DATE	DOCKET NUMBER	PROCEEDINGS
		jurisdiction to review the district court's order, this appeal is DISMISSED and Plaintiffs' "Emergency Motion under FRAP 8 and Circuit Rule 27-3 for Injunction Pending Appeal" is DENIED as moot. 1 Finally, we note that although the district court may not have authority to clarify an order of the Supreme Court, it does possess the ability to interpret and enforce the Supreme Court's order, as well as the authority to enjoin against, for example, a party's violation of the Supreme Court's order placing effective limitations on the scope of the district court's preliminary injunction. Cf. United States v. El-O-Pathic Pharmacy, 192 F.2d 62, 79-80 (9th Cir. 1951). But Plaintiffs' motion before the district court was clear: it sought clarification of the Supreme Court's June 26 order, not injunctive relief. Because the district court was not asked to grant injunctive relief or to modify the injunction, we do not fault it for not doing so. IT IS SO ORDERED. [10501556] (WL) [Entered: 07/07/2017 03:40 PM]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 17-16426

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
7/14/17	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: to be set. Preliminary Injunction Appeal. C.R. 3-3. [10509016] (RT) [Entered: 07/14/2017 12:38 PM]
7/14/17	2	Filed clerk order (Deputy Clerk: MCD): The appeal filed on July 14, 2017 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply. The mediation questionnaire is due three days after the date of this order. If they have not already done so, within 7 calendar days after the filing date

DATE	DOCKET NUMBER	PROCEEDINGS
		of this order, the parties shall make arrangements to obtain from the court reporter an official transcript of proceedings in the district court that will be included in the record on appeal. The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due not later than August 11, 2017; the answering brief is due September 8, 2017 or 28 days after service of the opening brief, whichever is earlier; and the optional reply brief is due within 21 days after service of the answering brief. See 9th Cir. R. 3-3(b). The parties are reminded that streamlined requests for extensions of time are not available in preliminary injunction appeals. See http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000638. Any request for an extension of time must be requested under Ninth Circuit Rule 31-2.2(b). Failure to file timely the opening brief shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. See 9th Cir. R. 42-1. [10509444] (ME) [Entered: 07/14/2017 02:42 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
7/15/17	3	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS Motion for injunction pending appeal. Date of service: 07/15/2017. [10509983] [17-16426] (Swingle, Sharon) [Entered: 07/15/2017 10:52 AM]
7/19/17	4	Received Order from the Supreme Court, dated 07/19/2017: The Government's motion seeking clarification of our order of June 26, 2017, is denied. The District Court order modifying the preliminary injunction with respect to refugees covered by a formal assurance is stayed pending resolution of the Government's appeal to the Court of Appeals for the Ninth Circuit. Justice Thomas, Justice Alito, and Justice Gorsuch would have stayed the District Court order in its entirety. Supreme Court No. 16-1540 (16A1191). [10513992] (HH) [Entered: 07/19/2017 10:17 AM]
		* * * * *
7/21/17	6	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State,

DATE	DOCKET NUMBER	PROCEEDINGS
		USA and USDHS Joint Motion to expedite case. Date of service: 07/21/2017. [10516877] [17-16426] (Swingle, Sharon) [Entered: 07/21/2017 10:39 AM]
7/24/17	7	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ): The Government's motion to stay pending appeal, Dkt. No. [3], is denied as moot. The briefing schedule entered at Dkt. No. [2] is vacated. The parties' joint motion to expedite the briefing and consideration of the merits of this appeal, Dkt. No. [6], is granted. The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due July 27, 2017; the answering brief and supplemental excerpts of record (if any) are due August 3, 2017; and the reply brief is due August 9, 2017. Any amicus briefs are due August 3, 2017. Oral argument is presently not scheduled, but if the panel later concludes that oral argument is necessary, argument will be scheduled by the panel as soon as practicable after briefing concludes. [10518691] (AF)

DATE	DOCKET NUMBER	PROCEEDINGS
		[Entered: 07/24/2017 11:49 AM]
7/27/17	8	Submitted (ECF) Opening Brief for review. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 07/27/2017. [10524184] [17-16426] (Swingle, Sharon) [Entered: 07/27/2017 02:39 PM]
7/27/17	9	Submitted (ECF) excerpts of record. Submitted by Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS. Date of service: 07/27/2017. [10524263] [17-16426]—[COURT UPDATE: Attached corrected excerpts of record. 7/28/2017 by TYL] (Swingle, Sharon) [Entered: 07/27/2017 03:04 PM]
7/27/17	10	Filed (ECF) U.S. Committee for Refugees and Immigrants Motion to intervene. Date of service: 07/27/2016. [10524434] [17-16426] (Doblick, Donna) [Entered: 07/27/2017 03:55 PM]
		* * * * *
7/28/17	14	Filed clerk order: The opening brief [8] submitted by appellants is filed.

DATE	DOCKET NUMBER	PROCEEDINGS
		Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [9] submitted by appellants. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10525654] (KT) [Entered: 07/28/2017 01:47 PM]
7/28/17	15	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ): The Court has received an Emergency Motion to Intervene (Dkt. # [10]). Any response shall be filed on or before 12:00 p.m. PST, Wednesday, August 2, 2017. Proposed-

DATE	DOCKET NUMBER	PROCEEDINGS
		Intervenor may file a reply on or before 12:00 p.m. PST, Thursday, August 3, 2017. [10525844] (AF) [Entered: 07/28/2017 02:35 PM]
8/2/17	16	Filed (ECF) Appellants John F. Kelly, Rex W. Tillerson, Donald J. Trump, U.S. Department of State, USA and USDHS response opposing motion ([10] Motion (ECF Filing), [10] Motion (ECF Filing) motion to intervene). Date of service: 08/02/2017. [10530017] [17-16426] (Swingle, Sharon) [Entered: 08/02/2017 09:33 AM]
		* * * * *
8/3/17	22	Filed (ECF) Intervenor—Pending U.S. Committee for Refugees and Immigrants reply to response (motion to intervene). Date of service: 08/03/2017. [10531927] [17-16426] (Doblick, Donna) [Entered: 08/03/2017 11:45 AM]
		* * * * *
8/3/17	25	Filed order (MICHAEL DALY HAWKINS, RONALD M. GOULD and RICHARD A. PAEZ): The Emergency Motion to Intervene (Dkt. # [10]) is DENIED. See

DATE	DOCKET NUMBER	PROCEEDINGS
		Bates v. Jones, 127 F.3d 870, 873 (9th Cir. 1997) ("Intervention at the appellate stage is . . . unusual and should ordinarily be allowed only for imperative reasons." (internal quotation marks omitted)); Fed. R. Civ. P. 24(a)(2) (requiring the court to permit intervention unless "existing parties adequately represent [proposed-intervenors'] interest"). The United States Committee for Refugees and Immigrants may file a brief as amicus curiae no later than Wednesday, August 9, 2017. If Appellants wish to respond to any argument raised in that brief, they may do so no later than 12:00 p.m. PST on Friday, August 11, 2017. [10532222] (AF) [Entered: 08/03/2017 01:49 PM]

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH,
PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

[Mar. 8, 2017]

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The State of Hawai'i (the "State") brings this action to protect its residents, its employers, its educational institutions, and its sovereignty against illegal actions of President Donald J. Trump and the federal government, specifically: President Trump's March 6, 2017 Executive Order, "Protecting the Nation From Foreign Terrorist Entry into the United States" (the

"Executive Order").[1] Plaintiff Ismail Elshikh, PhD, the Imam of the Muslim Association of Hawai'i, joins the State in its challenge because the Executive Order inflicts a grave injury on Muslims in Hawai'i, including Dr. Elshikh, his family, and members of his Mosque.

2. President Trump's original Executive Order dated January 27, 2017 blocked the entry into the United States, including Hawai'i, of any person from seven Muslim-majority countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.[2] His new Executive Order also blocks the entry into the United States, including Hawai'i, of nationals from six of the same countries—all except for Iraq—as long as those individuals do not have a valid U.S. visa as of the effective date of the Executive Order, or did not have one as of 5:00 p.m. EST on January 27, 2017. In other words, the Executive Order means that no prospective visa holder from the six designated countries will be able to enter the United States. This second Executive Order is infected with the same legal problems as the first Order—undermining bedrock constitutional and statutory guarantees.

3. The Executive Order means that thousands of individuals across the United States and in Hawai'i who have immediate family members living in the affected

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[1] As of this filing, President Trump's March 6, 2017 has not yet been published in the Federal Register. A copy of the Executive Order published on the White House website is attached as Exhibit 1, and is available at https://goo.gl/rnecqx.

[2] *See* Executive Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017). A copy of the first Executive Order is attached as Exhibit 2.

countries will now be unable to receive visits from those persons or to be reunited with them in the United States. It means that universities, employers, and other institutions throughout the United States and in Hawai'i will be unable to recruit or to welcome qualified individuals from the six designated countries. It threatens certain non-citizens within the United States and in Hawai'i with the possibility that they will be unable to travel abroad and return—for instance, because their visa only permits them one entry, or because their visa will have expired during the time the Executive Order is still in place.

4. President Trump's Executive Order is subjecting a portion of Hawaii's population, including Dr. Elshikh, his family, and members of his Mosque, to discrimination and second-class treatment, in violation of both the Constitution and the Immigration and Nationality Act. The Order denies them their right to associate with family members overseas on the basis of their religion and national origin. And it results in their having to live in a country and in a State where there is the perception that the Government has established a disfavored religion.

5. The Executive Order bars students, tourists, family members, and other visitors from the State on grounds that Congress and the Constitution have expressly prohibited. It is damaging Hawaii's institutions, harming its economy, and eroding Hawaii's sovereign interests in maintaining the separation between church and state as well as in welcoming persons from all nations around the world into the fabric of its society.

6. Plaintiffs accordingly seek an Order invalidating the portions of President Trump's Executive Order challenged here.

JURISDICTION AND VENUE

7. This Court has Federal Question Jurisdiction under 28 U.S.C. § 1331 because this action arises under the U.S. Constitution, the Administrative Procedure Act ("APA"), the Immigration and Nationality Act ("INA"), and other Federal statutes.

8. The Court is authorized to award the requested declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the APA, 5 U.S.C. § 706.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (e)(1). A substantial part of the events giving rise to this claim occurred in this District, and each Defendant is an officer of the United States sued in his official capacity.

PARTIES

10. Plaintiffs are the State of Hawai'i and Ismail Elshikh, PhD.

11. Hawai'i is the nation's most ethnically diverse State, and is home to more than 250,000 foreign-born residents. More than 100,000 of Hawaii's foreign-born residents are non-citizens.[3]

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[3] United States Census Bureau, *2015 American Community Survey 1-Year Estimates*, *available at* https://goo.gl/IGwJyf. A collection of the relevant data for Hawai'i is attached as Exhibit 3.

12. Estimates from the Fiscal Policy Institute show that as of 2010, Hawai'i had the fifth-highest percentage of foreign-born workers of any State (20% of the labor force). And 22.5% of Hawai'i business owners were foreign-born.[4]

13. Thousands of people living in Hawai'i obtain lawful permanent resident status each year, including over 6,500 in 2015.[5] That includes numerous individuals from the seven countries designated in the original Executive Order. According to DHS statistics, over 100 Hawai'i residents from Iran, Iraq, and Syria have obtained lawful permanent resident status since 2004 (DHS has withheld data pertaining to additional residents from the seven designated countries).[6]

14. Hawai'i is also home to 12,000 foreign students.[7] That includes numerous individuals from the seven originally-designated countries. At the University of Hawai'i, there are at least 27 graduate students from

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[4] The Fiscal Policy Institute, *Immigrant Small Business Owners*, at 24 (June 2012), *available at* https://goo.gl/vyNK9W.

[5] U.S. Department of Homeland Security, *Lawful Permanent Residents Supplemental Table 1: Persons Obtaining Lawful Permanent Resident Status by State or Territory of Residence and Region and Country of Birth Fiscal Year 2015*, *available at* https://goo.gl/ELYIkn. Copies of these tables for fiscal years 2005 through 2015 are attached as Exhibit 4.

[6] *See* Exhibit 4.

[7] Hawaii Department of Business, Economic Development & Tourism, *The Economic Impact of International Students in Hawaii—2016 Update*, at 8 (June 2016), *available at* https://goo.gl/mogNMA.

the seven countries studying pursuant to valid visas issued by the U.S. government.

15. In 2016, Hawaii's foreign students contributed over $400 million to Hawaii's economy through the payment of tuition and fees, living expenses, and other activities. These foreign students supported 7,590 jobs and generated more than $43 million in state tax revenues.[8]

16. In 2009, foreign residents (i.e., non-citizens who had not obtained lawful permanent resident status) made up 42.9% of doctorate students, and 27.7% of master's students in science, technology, engineering, and mathematics ("STEM") programs in Hawai'i.[9]

17. Hawaii's educational institutions have diverse faculties. At the University of Hawai'i, there are approximately 477 international faculty members legally present in the United States. There are at least 10 faculty members at the University who are lawful permanent residents from one of the seven designated countries in the original Executive Order, and 30 visiting faculty members with valid visas who are from one of the seven designated countries.

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[8] *The Economic Impact of International Students in Hawaii—2016 Update*, *supra*, at 10-11.

[9] U.S. Chamber of Commerce et al., *Help Wanted: The Role of Foreign Workers in the Innovation Economy*, at 21 (2013), *available at* https://goo.gl/c3BYBu.

18. Tourism is Hawaii's "lead economic driver."[10] In 2015 alone, Hawai'i welcomed 8.7 million visitors accounting for $15 billion in spending.[11]

19. Hawai'i is home to several airports, including Honolulu International Airport and Kona International Airport.

20. David Yutaka Ige is the Governor of Hawai'i, the chief executive officer of the State of Hawai'i. The Governor is responsible for overseeing the operations of the state government, protecting the welfare of Hawaii's citizens, and ensuring that the laws of the State are faithfully executed.

21. Douglas S. Chin is the Attorney General of Hawai'i, the chief legal officer of the State. The Attorney General is charged with representing the State in Federal Court on matters of public concern.

22. The Constitution of the State of Hawai'i provides that "[n]o law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof." Haw. Const. art. I, § 4. And the State has declared that the practice of discrimination "because of race, color, religion, age, sex, including gender identity or expression, sexual orientation, marital status, national origin, ancestry, or disability" is against public

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[10] Hawai'i Tourism Authority, *2016 Annual Report to the Hawai'i State Legislature*, at 20, *available at* https://goo.gl/T8uiWW.

[11] Hawai'i Tourism Authority, *2015 Annual Visitor Research Report*, at 2, *available at* https://goo.gl/u3RQmX. A copy of the table of contents and executive summary of this report is attached as Exhibit 5.

policy. Haw. Rev. Stat. Ann. § 381-1; *accord id.* §§ 489-3 & 515-3.

23. The State has an interest in protecting the health, safety, and welfare of its residents and in safeguarding its ability to enforce state law. The State also has an interest in "assuring that the benefits of the federal system," including the rights and privileges protected by the United States Constitution and Federal statutes, "are not denied to its general population." *Alfred L. Snapp & Sons, Inc. v. Puerto Rico*, 458 U.S. 592, 608 (1982). The State's interests extend to all of the State's residents, including individuals who suffer indirect injuries and members of the general public.

24. Plaintiff Ismail Elshikh, PhD, is an American citizen of Egyptian descent. He has been a resident of Hawai'i for over a decade.

25. Dr. Elshikh is the Imam of the Muslim Association of Hawai'i. He is a leader within Hawaii's Islamic community.

26. Dr. Elshikh's wife is of Syrian descent and is also a resident of Hawai'i.

27. Dr. Elshikh's mother-in-law is a Syrian national, living in Syria. Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother in September 2015. The I-130 Petition was approved in February 2016. Dr. Elshikh's mother-in-law does not currently hold a visa to enter the United States.

28. Dr. Elshikh and his wife have five children. They are all American citizens and residents of Hawai'i.

29. Defendant Donald J. Trump is the President of the United States. He issued both the original January 27, 2017 Executive Order, as well as the new March 6, 2017 Executive Order that is the subject of this Complaint.

30. Defendant U.S. Department of Homeland Security ("DHS") is a federal cabinet agency responsible for implementing and enforcing the Immigration and Nationality Act ("INA") and the Executive Order that is the subject of this Complaint. DHS is a Department of the Executive Branch of the United States Government, and is an agency within the meaning of 5. U.S.C. § 552(f). United States Customs and Border Protection ("CBP") is an Operational and Support Component agency within DHS, and is responsible for detaining and removing non-citizens from Iran, Syria, Somalia, Sudan, Libya, and Yemen who arrive at air, land, and sea ports across the United States, including Honolulu International Airport and Kona International Airport.

31. Defendant John F. Kelly is the Secretary of Homeland Security. He is responsible for implementing and enforcing the INA and the Executive Order that is the subject of this Complaint, and he oversees CBP. He is sued in his official capacity.

32. Defendant U.S. Department of State is a federal cabinet agency responsible for implementing the U.S. Refugee Admissions Program and the Executive Order that is the subject of this Complaint. The Department of State is a department of the Executive Branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f).

33. Defendant Rex Tillerson is the Secretary of State. He oversees the Department of State's implementation of the U.S. Refugee Admissions Program and the Executive Order that is the subject of this Complaint. The Secretary of State has authority to determine and implement certain visa procedures for non-citizens. Secretary Tillerson is sued in his official capacity.

34. Defendant United States of America includes all government agencies and departments responsible for the implementation of the INA, and for detention and removal of non-citizens from Iran, Syria, Somalia, Sudan, Libya, and Yemen who arrive at air, land, and sea ports across the United States, including Honolulu International Airport and Kona International Airport.

ALLEGATIONS

A. President Trump's Campaign Promises.

35. President Trump repeatedly campaigned on the promise that he would ban Muslim immigrants and refugees from entering the United States, particularly from Syria, and maintained the same rhetoric after he was elected.

36. On July 11, 2015, Mr. Trump claimed (falsely) that Christian refugees from Syria are blocked from entering the United States. In a speech in Las Vegas, Mr. Trump said, "If you're from Syria and you're a Christian, you cannot come into this country, and they're the ones that are being decimated. If you are

Islamic . . . it's hard to believe, you can come in so easily."[12]

37. On September 30, 2015, while speaking in New Hampshire about the 10,000 Syrian refugees the Obama Administration had accepted for 2016, Mr. Trump said "if I win, they're going back!" He said "they could be ISIS," and referred to Syrian refugees as a "200,000-man army."[13]

38. On December 7, 2015, shortly after the terror attacks in Paris, Mr. Trump issued a press release entitled: "Donald J. Trump Statement on Preventing Muslim Immigration."[14] The press release stated: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States . . . ." The release asserted that "there is great hatred towards Americans by large segments of the Muslim population." The press release remains accessible on www.donaldjtrump.com as of this filing.

39. The next day, when questioned about the proposed "shutdown," Mr. Trump compared his proposal to President Franklin Roosevelt's internment of Japanese

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[12] Louis Jacobson, *Donald Trump says if you're from Syria and a Christian, you can't come to the U.S. as a refugee*, Politifact (July 20, 2015 10:00 AM ET), https://goo.gl/fucYZP.

[13] Ali Vitali, *Donald Trump in New Hampshire: Syrian Refugees Are 'Going Back*, NBC News (Oct. 1, 2015, 7:33 AM ET), https://goo.gl/4XSeGX.

[14] Press Release, Donald J. Trump for President, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), *available at* https://goo.gl/D3OdJJ. A copy of this press release is attached as Exhibit 6.

Americans during World War II, saying, "[Roosevelt] did the same thing."[15] When asked what the customs process would look like for a Muslim non-citizen attempting to enter the United States, Mr. Trump said, "[T]hey would say, are you Muslim?" The interviewer responded: "And if they said 'yes,' they would not be allowed into the country." Mr. Trump said: "That's correct."[16]

40. During a Republican primary debate in January 2016, Mr. Trump was asked about how his "comments about banning Muslims from entering the country created a firestorm," and whether he wanted to "rethink this position." He said, "No."[17]

41. A few months later, in March 2016, Mr. Trump said, during an interview, "I think Islam hates us." Mr. Trump was asked, "Is there a war between the West and radical Islam, or between the West and Islam itself?" He replied: "It's very hard to separate. Because you don't know who's who."[18]

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[15] Jenna Johnson, *Donald Trump says he is not bothered by comparisons to Hitler*, The Washington Post (Dec. 8, 2015), https://goo.gl/6G0oH7.

[16] Nick Gass, *Trump not bothered by comparisons to Hitler*, Politico (Dec. 8, 2015 7:51 AM ET), https://goo.gl/IkBzPO.

[17] The American Presidency Project, *Presidential Candidates Debates: Republican Candidates Debate in North Charleston, South Carolina* (January 14, 2016), https://goo.gl/se0aCX.

[18] *Anderson Cooper 360 Degrees: Exclusive Interview With Donald Trump* (CNN television broadcast Mar. 9, 2016, 8:00 PM ET), *transcript available at* https://goo.gl/y7s2kQ.

42. Later, as the presumptive Republican nominee, Mr. Trump began using facially neutral language, at times, to describe the Muslim ban. Following the mass shootings at an Orlando nightclub in June 2016, Mr. Trump gave a speech promising to "suspend immigration from areas of the world where there's a proven history of terrorism against the United States, Europe or our allies until we fully understand how to end these threats." But he continued to link that idea to the need to stop "importing radical Islamic terrorism to the West through a failed immigration system." He said that "to protect the quality of life for all Americans—women and children, gay and straight, Jews and Christians and all people then we need to tell the truth about radical Islam." And he criticized Hillary Clinton for, as he described it, "her refusal to say the words 'radical Islam,'" stating: "Here is what she said, exact quote, 'Muslims are peaceful and tolerant people, and have nothing whatsoever to do with terrorism.' That is Hillary Clinton." Mr. Trump further stated that the Obama administration had "put political correctness above common sense," but said that he "refuse[d] to be politically correct."

43. Mr. Trump's June 2016 speech also covered refugees. He said that "[e]ach year the United States permanently admits 100,000 immigrants from the Middle East and many more from Muslim countries outside of the Middle East. Our government has been admitting ever-growing numbers, year after year, without

any effective plan for our own security."[19] He issued a press release stating: "We have to stop the tremendous flow of Syrian refugees into the United States."[20]

44. Later, on July 24, 2016, Mr. Trump was asked: "The Muslim ban. I think you've pulled back from it, but you tell me." Mr. Trump responded: "I don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. People were so upset when I used the word Muslim. Oh, you can't use the word Muslim. Remember this. And I'm okay with that, because I'm talking territory instead of Muslim."[21]

45. During an October 9, 2016 Presidential Debate, Mr. Trump was asked: "Your running mate said this week that the Muslim ban is no longer your position. Is that correct? And if it is, was it a mistake to have a religious test?" Mr. Trump replied: "The Muslim ban is something that in some form has morphed into a[n] extreme vetting from certain areas of the world." When asked to clarify whether "the Muslim ban still

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[19] Ryan Teague Beckwith, *Read Donald Trump's Speech on the Orlando Shooting*, Time (June 13, 2016, 4:36 PM ET), https://goo.gl/kgHKrb.

[20] Press Release, Donald J. Trump for President, *Donald J. Trump Addresses Terrorism, Immigration, and National Security* (June 13, 2016), *available at* https://goo.gl/GcrFhw.

[21] *Meet the Press* (NBC television broadcast July 24, 2016), *transcript available at* https://goo.gl/jHc6aU. A copy of this transcript is attached as Exhibit 7.

stands," Mr. Trump said, "It's called extreme vetting."[22]

46. Then, on December 21, 2016, following terror attacks in Berlin, Mr. Trump was asked whether he had decided "to rethink or re-evaluate [his] plans to create a Muslim registry or ban Muslim immigration to the United States." Mr. Trump replied: "You know my plans. All along, I've been proven to be right."[23]

B. President Trump's First Executive Order.

47. Within a week of being sworn in, President Trump acted upon his ominous campaign promises to restrict Muslim immigration, curb refugee admissions, and prioritize non-Muslim refugees.

48. In an interview on January 25, 2017, Mr. Trump discussed his plans to implement "extreme vetting" of people seeking entry into the United States. He remarked: "[N]o, it's not the Muslim ban. But it's countries that have tremendous terror. . . . [I]t's countries that people are going to come in and cause us tremendous problems."[24]

49. Two days later, on January 27, 2017, President Trump signed an Executive Order entitled, "Protecting

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[22] The American Presidency Project, *Presidential Debates: Presidential Debate at Washington University in St. Louis, Missouri* (Oct. 9, 2016), https://goo.gl/iIzf0A.

[23] *President-Elect Trump Remarks in Palm Beach, Florida*, C-SPAN (Dec. 21, 2016), https://goo.gl/JlMCst.

[24] *Transcript: ABC News Anchor David Muir Interviews President Trump*, ABC News (Jan. 25, 2017, 10:25 PM ET), https://goo.gl/NUzSpq.

the Nation From Foreign Terrorist Entry into the United States."

50. The first Executive Order was issued without a notice and comment period and without interagency review. Moreover, the first Executive Order was issued with little explanation of how it could further its stated objective.

51. When signing the first Executive Order, President Trump read the title, looked up, and said: "We all know what that means."[25] President Trump said he was "establishing a new vetting measure to keep radical Islamic terrorists out of the United States of America," and that: "We don't want them here."[26]

52. Section 3 of the first Executive Order was entitled "Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern." Section 3(c) "suspend[ed] entry into the United States, as immigrants and nonimmigrants" of persons from countries referred to in Section 217(a)(12) of the INA [8 U.S.C. § 1187(a)(12)], that is: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. The majority of the population in each of these seven countries is Muslim.

53. According to one report, not a single fatal terrorist attack has been perpetrated in the United States

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[25] *Trump Signs Executive Orders at Pentagon*, ABC News (Jan. 27, 2017), https://goo.gl/7Jzird.

[26] Sarah Pulliam Bailey, *Trump signs order limiting refugee entry, says he will prioritize Christian refugees*, The Washington Post (Jan. 27, 2017), https://goo.gl/WF2hmS.

by a national of one of these seven countries since at least 1975.[27] Other countries whose nationals have perpetrated fatal terrorist attacks in the United States are not part of either the original or the revised immigration ban.[28]

54. Section 3(c) of the first Executive Order meant that Lawful Permanent Residents, foreign students enrolled in U.S. universities (including in Hawai'i), individuals employed in the United States on temporary work visas, and others were to be halted at the border if they arrived in the United States (in Hawai'i or elsewhere) from one of the seven designated countries, including if the individual left the country and tried to return. Section 3(g) of the first Executive Order allowed the Secretaries of State and Homeland Security to make exceptions when they determined that doing so was "in the national interest."

55. The first Executive Order also provided for an expansion of its immigration ban to nationals from additional countries in the future. Section 3(d) directed the Secretary of State to (within about 30 days) "request [that] all foreign governments" provide the United States with information to determine whether a person is a security threat. Section 3(e) directed the Secretaries of Homeland Security and State to "submit to

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[27] Alex Nowrasteh, *Little National Security Benefit to Trump's Executive Order on Immigration*, Cato Institute Blog (Jan. 25, 2017, 3:31 PM ET), https://goo.gl/BCv6rQ.

[28] Scott Schane, *Immigration Ban Is Unlikely to Reduce Terrorist Threat, Experts Say*, N.Y. Times (Jan. 28, 2017), https://goo.gl/MBvOTk.

the President a list of countries recommended for inclusion" in the ban from among any countries that did not provide the information requested. Section 3(f) of the first Executive Order gave the Secretaries of State and Homeland Security further authority to "submit to the President the names of any additional countries recommended for similar treatment" in the future.

56. Section 5 of the first Executive Order was entitled "Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017." Section 5(a) directed the Secretary of State to "suspend the U.S. Refugee Admissions Program (USRAP) for 120 days." Section 5(e) permitted the Secretaries of State and Homeland Security to admit individuals as refugees on a case-by-case basis, but only if they determined that admission of the refugee was in the "national interest," including "when the person is a religious minority in his country of nationality facing religious persecution."

57. Section 5(b) directed the Secretaries of State and Homeland Security, "[u]pon resumption of USRAP admissions," to "prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality." In Section 5(c), President Trump "proclaim[ed] that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend[ed] any such entry" indefinitely.

58. In a January 27, 2017 interview with Christian Broadcasting Network, President Trump said that persecuted Christians would be given priority under the first Executive Order. He said (once again, falsely):

"Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair, everybody was persecuted in all fairness, but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair. So we are going to help them."[29]

59. The day after signing the first Executive Order, President Trump's advisor, Rudolph Giuliani, explained on television how the Executive Order came to be. He said: "When [Mr. Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"[30]

60. The President and his spokespersons defended the rushed nature of their issuance of the first Executive Order on January 27, 2017, by saying that their urgency was imperative to stop the inflow of dangerous persons to the United States. On January 30, 2017, President Trump tweeted: "If the ban were announced with a one week notice, the 'bad' would rush into our country during that week."[31] In a forum on January

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[29] *Brody File Exclusive: President Trump Says Persecuted Christians Will Be Given Priority as Refugees*, Christian Broadcasting Network (Jan. 27, 2017), https://goo.gl/2GLB5q.

[30] Amy B. Wang, *Trump asked for a 'Muslim ban,' Giuliani says—and ordered a commission to do it 'legally'*, The Washington Post (Jan. 29, 2017), https://goo.gl/Xog80h. A copy of this article is attached as Exhibit 8.

[31] *See* Donald J. Trump (@realDonaldTrump), Twitter (Jan. 30, 2017, 5:31 AM ET), https://goo.gl/FAEDTd.

30, 2017 at George Washington University, White House spokesman Sean Spicer said: "At the end of the day, what was the other option? To rush it out quickly, telegraph it five days so that people could rush into this country and undermine the safety of our nation?" [32] On February 9, 2017, President Trump claimed he had sought a one-month delay between signing and implementation, but was told by his advisors that "you can't do that because then people are gonna pour in before the toughness."[33]

61. On February 24, 2017, a draft report published by the Department of Homeland Security—and obtained by the Associated Press—concluded that citizenship was an "unlikely indicator" of terrorism threats against the United States. The draft report also found that very few persons from the seven countries included in President Trump's first Executive Order had carried out or attempted to carry out terrorism activities in the United States since 2011. Specifically, the DHS report determined that 82 people were inspired by a foreign terrorist group to carry out or attempt to carry out an attack in the United States. Half were U.S. citizens born in the United States, and the remaining persons were from 26 countries—with the most individuals

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[32] *See* Videotape: *WATCH: White House Press Secretary Sean Spicer joins forum at George Washington University to discuss the Trump Administration's "war" with the media and the access journalists should have covering the White House*, at 1:00, Fox 5 DC (Jan. 30, 2017), *available at* https://goo.gl/cpNUjT.

[33] Kevin Liptak, *Trump: I wanted month delay before travel ban, was told no*, CNN Politics (Feb. 9, 2017, 6:31 AM ET), https://goo.gl/EOez3k.

originating from Pakistan, followed by Somalia, Bangladesh, Cuba, Ethiopia, Iraq and Uzbekistan. Of the seven countries originally included in the travel ban, only Somalia and Iraq were identified as being among the "top" countries-of-origin for the terrorists analyzed in the report.[34] The draft report related that three offenders (in the time period covered) had been from Somalia, two were from Iraq, one was from Iran, Sudan, and Yemen, and none were from Syria or Libya.[35] The draft report also found that terrorist groups in three of the original seven countries posed a threat to the United States (Iraq, Yemen, and Syria), while groups in the other four named countries in the original Executive Order were regionally focused.[36]

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[34] Vivian Salama & Alicia A. Caldwell, *AP Exclusive: DHS report disputes threat from banned nations*, Associated Press (Feb. 24, 2017), https://goo.gl/91to90. A copy of the Associated Press article is attached as Exhibit 9. A copy of the draft DHS report is available at https://goo.gl/0yfXpZ and attached as Exhibit 10. A final version of the report, entitled *Intelligence Assessment: Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist*, was later obtained by CNN, and is attached as Exhibit 11. *See* Tammy Kupperman, *DHS assessment: Individuals radicalized once in US*, CNN Politics (Mar. 4, 2017, 3:02 PM ET), https://goo.gl/Q6OVTd.

[35] Phil Helsel, *DHS Draft Report Casts Doubt on Extra Threat from 'Travel Ban' Nationals in U.S.*, NBC News (Feb. 24, 2017, 9:26 PM ET), https://goo.gl/gDHq6i. A copy of this NBC News article is attached as Exhibit 12.

[36] *Id.*

C. Implementation and Judicial Enjoinment of the First Executive Order.

62. Upon the issuance of the first Executive Order, Defendants began detaining people at U.S. airports who, but for the first Executive Order, were legally entitled to enter the United States. Some were also removed from the United States. Estimates indicate that over 100 people were detained upon arrival at U.S. airports.[37]

63. Among others, Defendants detained and/or removed:

a. Lawful permanent residents, including dozens at Dulles International Airport in Virginia,[38] and others at Los Angeles International Airport who were pressured to sign Form I-407 to *relinquish* their green cards;[39]

b. People with special immigrant visas, including an Iraqi national at John F. Kennedy Interna-

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[37] Michael D. Shear et al., *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. Times (Jan. 28, 2017), https://goo.gl/OrUJEr.

[38] *See, e.g.*, Petition ¶ 2, *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 28, 2017).

[39] Leslie Berestein Rojas et al., *LAX immigration agents asks detainees to sign away their legal residency status, attorneys say*, Southern California Public Radio News (Jan. 30, 2017), https://goo.gl/v6JoUC; Brenda Gazzar & Cynthia Washicko, *Thousands protest Trump's immigration order at LAX*, Los Angeles Daily News (Jan. 29, 2017), https://goo.gl/1vA37M.

tional Airport who worked as an interpreter for the U.S. Army in Iraq;[40]

c. A doctor at the Cleveland Clinic with a valid work visa who was trying to return home from vacation;[41]

d. People with valid visas to visit family in the United States, including a Syrian woman sent to Saudi Arabia after being convinced by officials at O'Hare International Airport to sign paperwork cancelling her visa.[42]

64. People overseas were blocked from boarding flights to the United States or told they could no longer come here. The State Department released information verifying that 60,000 visas were revoked between January 27, 2017, when the first Executive Order was signed, and February 3, 2017.[43]

65. Confusion, backlash, and habeas corpus litigation arose in the wake of the first Executive Order, including with regard to whether it applied to lawful permanent residents. Within the first 72 hours that

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[40] *See, e.g.*, Petition 2, *Darweesh v. Trump*, No. 1:17-cv-00480 (E.D.N.Y. Jan. 28, 2017).

[41] Jane Morice, *Two Cleveland Clinic doctors vacationing in Iran detained in New York, then released*, Cleveland.com (Jan. 29, 2017), https://goo.gl/f0EGV3.

[42] John Rogers, *Longtime US residents, aspiring citizens caught up in ban*, StarTribune (Jan. 30, 2017, 1:45 AM ET), https://goo.gl/eEPAuE.

[43] Adam Kelsey et al., *60,000 Visas Revoked Since Immigration Executive Order Signed: State Department*, ABC News (Feb. 3, 2017, 6:32 PM ET), https://goo.gl/JwPDEa.

the first Executive Order was in effect, Defendants reportedly changed their minds three times about whether it did.[44]

66. Hundreds of State Department officials signed a memorandum circulated through the State Department's "Dissent Channel" stating that the Executive Order "runs counter to core American values" including "nondiscrimination," and that "[d]espite the Executive Order's focus on them, a vanishingly small number of terror attacks on U.S. soil have been committed by foreign nationals" here on visas.[45]

67. Likewise, Senators John McCain (R-AZ) and Lindsey Graham (R-SC) stated: "This executive order sends a signal, intended or not, that America does not want Muslims coming into our country."[46]

68. DHS Secretary Kelly issued a press release on Sunday, January 29, 2017, stating that: "In applying the provisions of the president's executive order, I hereby deem the entry of lawful permanent residents to be in the national interest. Accordingly, absent the receipt of significant derogatory information indicating a seri-

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[44] Evan Perez et al., *Inside the confusion of the Trump executive order and travel ban*, CNN Politics (Jan. 30, 2017 11:29 AM ET), https://goo.gl/Z3kYEC.

[45] Jeffrey Gettleman, *State Department Dissent Cable on Trump's Ban Draws 1,000 Signatures*, N.Y. Times (Jan. 31, 2017), https://goo.gl/svRdIw. A copy of the Dissent Channel memorandum is attached as Exhibit 13.

[46] Press Release, Senator John McCain, *Statement By Senators McCain & Graham On Executive Order On Immigration* (Jan. 29, 2017), *available at* https://goo.gl/EvHvmc.

ous threat to public safety and welfare, lawful permanent resident status will be a dispositive factor in our case-by-case determinations."[47]

69. Secretary Kelly's statement thus indicated that the first Executive Order *did* apply to lawful permanent residents from the designated countries, and only the Secretary's determination under Section 3(g) that admission of lawful permanent residents, absent certain information reviewed on a case-by-case basis, is in the national interest, allows them to enter.

70. Then, on February 1, 2017, White House Counsel Donald McGahn issued a Memorandum taking yet another position on green-card holders, now purporting to "clarify" that such persons were never covered by Sections 3 and 5 of the first Executive Order.

71. On February 3, 2017, the District Court for the Western District of Washington entered a temporary restraining order, enjoining President Trump and his Administration from enforcing the first Executive Order. On February 9, 2017, the Court of Appeals for the Ninth Circuit issued a *per curiam* opinion denying the Government's emergency motion for a stay of the District Court's order. On February 16, 2017, the Government filed a brief in the Ninth Circuit advising the court that "the President intends in the near future to rescind the [first Executive] Order and replace it with a new, substantially revised Executive Order"; accord-

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[47] Press Release, U.S. Department of Homeland Security, *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States* (Jan. 29, 2017), *available at* https://goo.gl/6krafi.

ingly, the Government requested that the court "hold its consideration of the case until the President issues the new Order and then vacate the panel's preliminary decision."[48] On February 24, 2017, the Government filed another motion requesting that the Ninth Circuit hold its proceedings in abeyance. On February 27, 2017, the Ninth Circuit panel denied the motion to hold appellate proceedings in abeyance and set forth a new briefing schedule. Under that schedule, the Government's opening brief is due March 10, 2017.

D. President Trump's New Executive Order.

72. On March 6, 2017—a full month after the District Court for the Western District of Washington enjoined the first Executive Order—President Trump issued the new Executive Order that is the subject of this Complaint. The new Order is entitled "Protecting the Nation from Foreign Terrorist Entry into the United States."

73. Also on March 6, 2017, the Department of Homeland Security published a "Q&A" document with answers to thirty-seven questions about the new Executive Order.[49]

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[48] Appellants' Supplemental Brief On *En Banc* Consideration at 4, *Washington v. Trump*, No. 17-35105 (Feb. 16, 2017), ECF No. 154.

[49] *See* Department of Homeland Security, Q&A: Protecting the Nation from Foreign Terrorist Entry to the United States (March 6, 2017, 11:30 AM ET), https://goo.gl/zFtFg8. A copy of this Q&A document is attached as Exhibit 14.

74. For several weeks before its release, members of the Administration had foreshadowed the arrival of the revised Executive Order.

a. On February 21, Senior Advisor to the President, Stephen Miller, told Fox News that the new travel ban would have the same effect as the old one. He said: "Fundamentally, you're still going to have the same basic policy outcome for the country, but you're going to be responsive to a lot of very technical issues that were brought up by the court and those will be addressed. But in terms of protecting the country, those basic policies are still going to be in effect."[50]

b. The White House originally indicated it would sign the new Executive Order on Wednesday, March 1, 2017, but then postponed the announcement. One Administration official told a news outlet on February 28 that a reason for President Trump's delay in signing an updated Executive Order was "the busy news cycle," and the desire of the President that the new order "get plenty of attention."[51]

c. A senior Administration official told a different news outlet on March 1, 2017, that a related rea-

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[50] *Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start* (Fox News television broadcast Feb. 21, 2017), *transcript available at* https://goo.gl/wcHvHH.

[51] Shane Goldmacher & Nahal Toosi, *Trump delays signing new travel ban order, officials say*, Politico (Feb. 28, 2017, 11:51 PM ET), https://goo.gl/5UJIFz.

son for the delay in releasing the updated Executive Order was the "positive reaction" to President Trump's "first address to Congress" on the evening of Tuesday, February 28, 2017. That article reported that "[s]igning the executive order Wednesday, as originally indicated by the White House, would have undercut the favorable coverage," and the senior Administration official "didn't deny the positive reception was part of the [A]dministration's calculus in pushing back the travel ban announcement."[52]

75. Section 1 of the new Executive Order states that its purpose is to "protect [the United States'] citizens from terrorist attacks, including those committed by foreign nationals." Section 1(h) identifies two concrete examples of persons who have committed terrorism-related crimes in the United States, after either entering the country "legally on visas" or entering "as refugees": "In January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses. And in October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction[.]" Iraq is no longer included in the ambit of the travel ban.

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[52] Laura Jarrett et al., *Trump delays new travel ban after well-reviewed speech*, CNN Politics (Mar. 1, 2017, 6:01 AM ET), https://goo.gl/McqMm5.

76. Section 2(c) of the new Executive Order suspends the "entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen"—six of the seven countries that were designated in the first Order, with Iraq now omitted—for a period of "90 days from the effective date of this order."

77. Section 3 provides for various "exceptions" and potential "waivers" to Section 2's travel ban. Under Section 3(a), "the suspension of entry pursuant to section 2 of this order shall apply only to foreign nationals of the designated countries who: (i) are outside the United States on the effective date of this order; (ii) did not have a valid visa at 5:00 p.m., eastern standard time, on January 27, 2017; and (iii) do not have a valid visa on the effective date of this order." *See* Executive Order § 3(a)(i)-(iii).

78. Section 3(b) lists categorical "exceptions" from Section 2: lawful permanent residents; foreign nationals who are admitted or paroled into the United States "on or after the effective date of this order"; foreign nationals with "a document other than a visa . . . that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document"; dual nationals traveling on passports issued by a non-designated country; foreign nationals traveling on certain diplomatic visas; and foreign nationals who have been granted asylum as well as refugees who have been admitted to the United States. *Id.* at § 3(b)(i)-(iv).

79. Section 3(c) provides that "a consular officer, or as appropriate, the Commissioner, U.S. Customs and Border Protection (CBP) . . . may, in the consular officer's or the CBP official's discretion, decide on a

case-by-case basis to authorize the issuance of a visa to, or to permit the entry of, a foreign national for whom entry is otherwise suspended" if he or she determines that "denying entry during the suspension period would cause undue hardship . . . [and the individual's] entry would not pose a threat to national security and would be in the national interest." *Id.* § 3(c).

80. Like the first Executive Order, the new Executive Order provides for an expansion of its immigration ban to nationals from additional countries in the future. Section 2(a) directs the Secretary of Homeland Security, in consultation with the Secretary of State as well as the Director of National Intelligence, to "conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA . . . to determine that the individual is not a security or public safety threat." *Id.* § 2(a). Those officials are instructed to submit a report on "the results of the worldwide review" to the President, as well as "a list of countries that do not provide adequate information," within 20 days of the effective date of the Executive Order. *Id.* § 2(b). The Secretary of State shall then "request that all foreign governments that do not supply [the necessary] information regarding their nationals begin providing it within 50 days of notification." *Id.* § 2(d). After that 50-day period, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, "shall submit to the President a list of countries recommended for inclusion" in the travel ban.

Id. § 2(e). Those officials are also authorized to "submit to the President," at "any point after the submission of the list" of countries recommended for inclusion, "the names of additional countries recommended for similar treatment." *Id.* § 2(f).

81. Section 6 of the Executive Order suspends the "travel" of all refugees to the United States for a period of 120 days, and suspends all "decisions" by the Secretary of Homeland Security on applications for refugee status for 120 days. *Id.* § 6(a). After those 120 days are over, "the Secretary of Homeland Security shall resume making decisions on applications for refugee status only for stateless persons and nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined" that "additional procedures"—identified by those officials as being necessary "to ensure that individuals seeking admission as refugees do not pose a threat" to the United States—have been "implemented" and "are adequate to ensure the security and welfare of the United States." *Id.* § 6(a).

82. Under Section 14, the revised Executive Order takes effect on March 16, 2017.

83. In the Department of Homeland Security's Q&A document about the Executive Order, DHS relates that nationals from one of the six designated countries who are presently in the United States, and "in possession of a valid single entry visa," will have to obtain "a valid visa or other document permitting [them] to travel to and seek admission to the United States" in order to

leave and obtain "subsequent entry to the United States."[53]

84. In the Department of Homeland Security's Q&A document about the Executive Order, DHS also relates that international students, exchange visitors and their dependents from the six designated countries —who are in the United States presently but whose visas "expire[] *while the Executive Order is in place*"— will have to "obtain a new, valid visa to return to the United States" if they have to "depart the country."[54]

E. Effects of the New Executive Order on Individual Plaintiff Dr. Elshikh.

85. The new Executive Order will prevent Dr. Elshikh's mother-in-law from obtaining a visa to visit or reunite with her family in Hawai'i. That is so even though Dr. Elshikh, his wife, and their children are all *American citizens*, and *even though* Dr. Elshikh's wife's I-130 Petition was granted.

86. Dr. Elshikh's mother-in-law last visited the family in 2005, when she stayed for one month. She has not met two of Dr. Elshikh's children, and only Dr. Elshikh's oldest child remembers meeting her grandmother.

87. On January 31, 2017—after the first Executive Order was put in place—Dr. Elshikh was notified by an individual from the National Visa Center that his mother-in-law's application for an immigrant visa had been put on hold. Then, on March 2, 2017—after the

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[53] *See* Exhibit 14, at Q4.

[54] *See id.* at Q25.

first Executive Order was enjoined—Dr. Elshikh and his family were notified by the National Visa Center that his mother-in-law's visa application had progressed to the next stage of the process and that her interview would be scheduled at an embassy overseas. Under the new Executive Order, however, Dr. Elshikh fears that his mother-in-law will, once again, be unable to "enter" the country under Section 2(c) of the Executive Order. The family is devastated.

88. Dr. Elshikh's children, all twelve years of age or younger, are deeply affected by the new Executive Order. It conveys to them a message that their own country would discriminate against individuals who share their ethnicity, including members of their own family, and who hold the same religious beliefs.

89. Members of Dr. Elshikh's Mosque are also affected by the new Executive Order. Muslims in the Hawai'i Islamic community feel that the new Executive Order targets Muslim citizens because of their religious views and national origin. Dr. Elshikh believes that, as a result of the new Executive Order, he and members of the Mosque will not be able to associate as freely with those of other faiths.

90. Dr. Elshikh feels that, as a result of the new Executive Order, there is now a favored and disfavored religion in Hawai'i and the United States, i.e., that a religion has been established.

91. Many members of Dr. Elshikh's Mosque have family and friends living in the countries listed in the new Executive Order. Because of the new Executive

Order, they live in forced separation from those family and friends.

F. Effects of the New Executive Order on Plaintiff State of Hawai'i.

92. The new Executive Order also has profound effects on the State as a whole. It prevents nationals of the six designated countries from relocating to, or even visiting, Hawai'i for educational, family, religious, or business reasons.

93. Hawai'i currently has 27 graduate students, 10 permanent faculty members, and 30 visiting faculty members from the seven countries originally designated in the first Executive Order. This demonstrates the extent to which the University of Hawai'i draws on talent from around the world, including from Muslim-majority countries, to enrich its student body and educational environment. In the wake of the new Executive Order, Hawai'i will no longer be able to recruit, accept, enroll, or welcome similar individuals from the six countries designated in the new Executive Order.

94. The University of Hawai'i and other state learning institutions depend on the collaborative exchange of ideas, including among people of different religions and national backgrounds. For this reason, the University of Hawai'i has study abroad or exchange programs in over thirty countries, and international agreements for faculty collaboration with over 350 international institutions spanning forty different countries. The new Executive Order threatens such educational collaboration and harms the ability of the University of Hawai'i to fulfill its educational mission.

95. Hawai'i is also home to numerous non-citizens from the six designated countries—foreign students, persons on exchange, visitors, and temporary workers —whose lives may be directly affected by the new Executive Order. Some of these non-citizens may be unable to travel abroad to their home countries, for fear that they will be unable to return—for instance, if they have only a single entry visa, or if their visa will expire while the new Executive Order is in place.

96. In addition, the new Executive Order blocks all of Hawaii's residents—including U.S. citizens—from receiving visits from, and/or reunifying with, their family members who live in these six designated countries. In 2016, approximately 8% of Hawaii's visitors (in total) came to visit family and friends, and approximately 12% of Hawaii's visitors from the areas of the globe including the Middle East and Africa came to visit family and friends. Under the new Executive Order, these individuals, to the extent that they live in the six designated countries, will no longer be able to travel to Hawai'i to visit family and friends.

97. More broadly, the new Executive Order means that Hawai'i will be unable to honor the commitments to nondiscrimination and diversity embodied in the State's Constitution, laws, and policies. For example, state agencies and universities cannot accept qualified applicants for open positions if they are residents of one of the six designated countries. This contravenes policies at the State's universities and agencies that are

designed to promote diversity and recruit talent from abroad.[55]

98. Given that the new Executive Order began life as a "Muslim ban," its implementation also means that the State will be forced to tolerate a policy that disfavors one religion and violates the Establishment Clauses of both the federal and state constitutions.

99. Beyond these severe intangible harms, the new Executive Order has a detrimental effect on Hawaii's economy as a whole. It is not only governmental entities that are barred from recruiting and/or hiring workers from the six designated countries. Private employers within the State are similarly burdened.

100. Further, both the first Executive Order and the new Executive Order have the effect of depressing international travel to and tourism in Hawai'i. Under the new Executive Order, Hawai'i can no longer welcome tourists from the six designated countries. This directly harms Hawaii's businesses and, in turn, the State's revenue. In 2015 alone, Hawai'i welcomed over 6,800 visitors from the Middle East and over 2,000 visitors from Africa. Data from Hawaii's Tourism Authority suggests that even during the short period of

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[55] *See, e.g.*, State of Hawai'i, Department of Human Resources Development, Policy No. 601.001: Discrimination / Harassment-Free Workplace Policy (revised Nov. 16, 2016), *available at* https://goo.gl/7q6yzJ; University of Hawai'i, Mānoa, Policy M1.100: Non-Discrimination and Affirmative Action Policy, *available at* https://goo.gl/6YqVl8 (last visited Mar. 7, 2017 8:27 PM ET); *see also, e.g.*, *Campus Life: Diversity*, University of Hawai'i, Mānoa, https://goo.gl/3nF5C9 (last visited Mar. 7, 2017 8:27 PM ET).

time that the first Executive Order was in place, the number of visitors to Hawai'i from the Middle East (including Iran, Iraq, Syria and Yemen) fell—namely, Hawai'i had 278 visitors from the Middle East in January 2017, compared to 348 visitors from that same region in January 2016. This depressed effect on travel and tourism from the Middle East and Africa is likely to continue under the new Executive Order.

101. According to reports from travel companies and research firms, travel to the United States more broadly "took a nosedive" following President Trump's issuance of the first Executive Order.[56] For instance, an airfare prediction company found that flight search demand from 122 countries to the United States dropped 17% between January 26 and February 1, after the first Executive Order was signed.[57]

102. Even with respect to countries not currently targeted by the new Executive Order, there is a likely "chilling effect" on tourism to the United States, including Hawai'i. The new Executive Order contemplates an expansion of the immigration ban and in fact authorizes the Secretaries of State and Homeland Security to recommend additional countries for inclusion in the near future. This likely instills fear and a disinclination to travel to the United States among foreigners in other countries that President Trump has been hostile towards—i.e., residents of other Muslims countries, China, and Mexico. The new Executive Order gives

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[56] Shivani Vora, *After Travel Ban, Interest in Trips to U.S. Declines*, N.Y. Times (Feb. 20, 2017), https://goo.gl/Mz9o5T.

[57] *Id.*

rise to a global perception that the United States is an exclusionary country, and it dampens the appetite for international travel here generally.

103. A decrease in national and international tourism would have a severe impact on Hawaii's economy.

104. The new Executive Order also hinders the efforts of the State and its residents to resettle and assist refugees. Refugees from numerous countries have resettled in Hawai'i in recent years.[58] While the State's refugee program is small, it is an important part of the State's culture, and aiding refugees is central to the mission of private Hawai'i organizations like Catholic Charities Hawai'i and the Pacific Gateway Center.[59] In late 2015, as other States objected to the admission of Syrian refugees, Governor Ige issued a statement that "slamming the door in their face would be a betrayal of our values." Governor Ige explained: "Hawai'i and our nation have a long history of welcoming refugees impacted by war and oppression. Hawai'i is the Aloha State, known for its tradition of welcoming all people with tolerance and mutual respect."[60] But as long as the new Executive Order prohibits refugee admissions,

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[58] U.S. Department of Health & Human Servs., Office of Refugee Resettlement, *Overseas Refugee Arrival Data: Fiscal Years 2012-2015*, *available at* https://goo.gl/JcgkDM.

[59] *See About: Our History*, Catholic Charities Hawai'i, https://goo.gl/deVBla (last visited Mar. 7, 2017, 11:35 AM ET); *About: Mission*, Pacific Gateway Center, https://goo.gl/J8bN5k (last visited Mar. 7, 2017, 11:35 AM ET).

[60] Press Release, Governor of the State of Hawai'i, *Governor David Ige's Statement On Syrian Refugees* (Nov. 16, 2015), *available at* https://goo.gl/gJcMIv.

the State and its residents are prevented from helping refugees resettle in Hawai'i.

105. President Trump's new Executive Order is antithetical to Hawaii's State identity and spirit. For many in Hawai'i, including State officials, the Executive Order conjures up the memory of the Chinese Exclusion Acts and the imposition of martial law and Japanese internment after the bombing of Pearl Harbor. As Governor Ige observed two days after President Trump issued the first Executive Order, "Hawai'i has a proud history as a place immigrants of diverse backgrounds can achieve their dreams through hard work. Many of our people also know all too well the consequences of giving in to fear of newcomers. The remains of the internment camp at Honouliuli are a sad testament to that fear. We must remain true to our values and be vigilant where we see the worst part of history about to be repeated."[61]

CAUSES OF ACTION

COUNT I

(First Amendment—Establishment Clause)

106. The foregoing allegations are realleged and incorporated by reference herein.

107. The Establishment Clause of the First Amendment prohibits the Federal Government from officially preferring one religion over another.

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[61] Press Release, Governor of the State of Hawai'i, *Statement of Governor David Ige On Immigration To The United States* (Jan. 29, 2017), *available at* https://goo.gl/62w1fh.

108. Sections 2 and 6 of President Trump's March 6, 2017 Executive Order, as well as Defendants' statements regarding the Executive Order and their actions to implement it, are intended to disfavor Islam.

109. Sections 2 and 6 of the Executive Order, as well as Defendants' statements regarding the Executive Order and their actions to implement it, have the effect of disfavoring Islam.

110. Through their actions described in this Complaint, Defendants have violated the Establishment Clause. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT II

(Fifth Amendment—Equal Protection)

111. The foregoing allegations are realleged and incorporated by reference herein.

112. The Due Process Clause of the Fifth Amendment prohibits the Federal Government from denying equal protection of the laws, including on the basis of religion and/or national origin, nationality, or alienage.

113. The March 6, 2017 Executive Order was motivated by animus and a desire to discriminate on the basis of religion and/or national origin, nationality, or alienage.

114. The Executive Order differentiates between people based on their religion and/or national origin, nationality, or alienage and is accordingly subject to

strict scrutiny. It fails that test, because it is over- and under-inclusive in restricting immigration for security reasons. The statements of President Trump and his advisors also provide direct evidence of the Executive Order's discriminatory motivations.

115. For the same reasons, the Executive Order is not rationally related to a legitimate government interest.

116. Sections 2 and 6 of the Executive Order, as well as Defendants' statements regarding the Executive Order and their actions to implement it, discriminate against individuals based on their religion and/or national origin, nationality, or alienage without lawful justification.

117. Through their actions described in this Complaint, Defendants have violated the Equal Protection guarantees of the Fifth Amendment. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT III

(Fifth Amendment—Substantive Due Process)

118. The foregoing allegations are realleged and incorporated by reference herein.

119. The right to international travel is protected by the Due Process Clause of the Fifth Amendment. Moreover, citizens may have a constitutionally protected interest in specific non-citizens' ability to travel to the United States.

120. The March 6, 2017 Executive Order curtails those rights for numerous individuals, without any legal justification.

121. Through their actions described in this Complaint, Defendants have violated the Substantive Due Process guarantees of the Fifth Amendment. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT IV

(Fifth Amendment—Procedural Due Process)

122. The foregoing allegations are realleged and incorporated by reference herein.

123. The Due Process Clause of the Fifth Amendment prohibits the Federal Government from depriving individuals of liberty interests without due process of law.

124. Non-citizens, including lawful permanent residents and non-immigrants holding valid visas, have a liberty interest in leaving and entering the country, and in being free from unlawful detention. Moreover, citizens may assert cognizable liberty interests with respect to noncitizen relatives who are deprived of due process.

125. The Due Process Clause establishes a minimum level of procedural protection before those liberty interests can be deprived. A non-citizen must be given an opportunity to present her case effectively, which

includes a hearing and some consideration of individual circumstances.

126. Through their actions described in this Complaint, Defendants have violated the Procedural Due Process guarantees of the Fifth Amendment. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT V

(Immigration and Nationality Act)

127. The foregoing allegations are realleged and incorporated by reference herein.

128. The INA provides that "[e]xcept as specifically provided" in certain subsections, "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." 8 U.S.C. § 1152(a)(1)(A).

129. The INA also establishes specific criteria for determining terrorism-related inadmissibility.

130. Sections 2 and 6 of the March 6, 2017 Executive Order violate the INA by discriminating on the basis of nationality, ignoring and modifying the statutory criteria for determining terrorism-related inadmissibility, and exceeding the President's authority under the INA, including under 8 U.S.C. §§ 1182(f) and 1185(a).

131. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as

well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT VI

(Religious Freedom Restoration Act)

132. The foregoing allegations are realleged and incorporated by reference herein.

133. The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1(a), prohibits the Federal Government from substantially burdening the exercise of religion, even if the burden results from a rule of general applicability.

134. Section 2 of the March 6, 2017 Executive Order and Defendants' actions to implement the Executive Order impose a substantial burden on the exercise of religion.

135. Among other injuries, some non-citizens currently outside the United States cannot enter the United States to reunite with their families or religious communities. Religious communities in the United States cannot welcome visitors, including religious workers, from designated countries. And some non-citizens currently in the United States may be prevented from travelling abroad on religious trips, including pilgrimages or trips to attend religious ceremonies overseas, if they do not have the requisite travel documents or multiple-entry visas.

136. Through their actions described in this Complaint, Defendants have violated the RFRA. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other

Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT VII

(Substantive Violation of the Administrative *Procedure Act through Violations of the Constitution,* Immigration and Nationality Act, and Arbitrary and Capricious Action)

137. The foregoing allegations are realleged and incorporated by reference herein.

138. The APA requires courts to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

139. In enacting and implementing Sections 2 and 6 of the March 6, 2017 Executive Order, Defendants have acted contrary to the Establishment Clause and Fifth Amendment of the United States Constitution.

140. In enacting and implementing Sections 2 and 6 of the Executive Order, Defendants have acted contrary to the INA and RFRA. Defendants have exceeded their statutory authority, engaged in nationality- and religion-based discrimination, and failed to vindicate statutory rights guaranteed by the INA.

141. Further, in enacting and implementing Sections 2 and 6 of the Executive Order, Defendants have acted arbitrarily and capriciously. Among other arbitrary actions and omissions, Defendants have not offered

a satisfactory explanation for the countries that are and are not included within the scope of the Executive Order. The Executive Order purports to protect the country from terrorism, but sweeps in millions of people who have absolutely no connection to terrorism. Through their actions described in this Complaint, Defendants have violated the substantive requirements of the APA. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

COUNT VIII

(Procedural Violation of the Administrative Procedure Act)

142. The foregoing allegations are realleged and incorporated by reference herein.

143. The APA requires courts to hold unlawful and set aside any agency action taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

144. The Departments of State and Homeland Security are "agencies" under the APA. *See* 5 U.S.C. § 551(1).

145. The APA requires that agencies follow rulemaking procedures before engaging in action that impacts substantive rights. *See* 5 U.S.C. § 553.

146. In implementing Sections 2 and 6 of the March 6, 2017 Executive Order, federal agencies have changed the substantive criteria by which individuals from the six designated countries may enter the United

States. This, among other actions by Defendants, impacts substantive rights.

147. Defendants did not follow the rulemaking procedures required by the APA in enacting and implementing the Executive Order.

148. Through their actions described in this Complaint, Defendants have violated the procedural requirements of the APA. Defendants' violation inflicts ongoing harm upon Dr. Elshikh, his family, and members of his Mosque, as well as other Hawai'i residents and the sovereign interests of the State of Hawai'i.

PRAYER FOR RELIEF

149. WHEREFORE, Plaintiffs pray that the Court:

a. Declare that Sections 2 and 6 of President Trump's Executive Order of March 6, 2017 are unauthorized by, and contrary to, the Constitution and laws of the United States;

b. Enjoin Defendants from implementing or enforcing Sections 2 and 6 across the nation;

c. Pursuant to Federal Rule of Civil Procedure 65(b)(2), set an expedited hearing within fourteen (14) days to determine whether the Temporary Restraining Order should be extended; and

d. Award such additional relief as the interests of justice may require.

DATED: Honolulu, Hawai'i, Mar. 8, 2017.

Respectfully submitted,

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- December 07, 2015 -

DONALD J. TRUMP STATEMENT ON PREVENTING MUSLIM IMMIGRATION

(New York, NY) December 7th, 2015,—Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on. According to Pew Research, among others, there is great hatred towards Americans by large segments of the Muslim population. Most recently, a poll from the Center for Security Policy released data showing "25% of those polled agreed that violence against Americans here in the United States is justified as a part of the global jihad" and 51% of those polled, "agreed that Muslims in America should have the choice of being governed according to Shariah." Shariah authorizes such atrocities as murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women.

Mr. Trump stated, "Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again."—*Donald J. Trump*

Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States

Scope Note: This paper was prepared at the request of the DHS Acting Under Secretary for Intelligence and Analysis. It assesses the international terrorist threat to the United States and worldwide by citizens of Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. Citizens of these seven countries were impacted by Section 3 of Executive Order (E.O.) 13769 "Protecting the Nation from Foreign Terrorist Entry into the United States." The assessment relies on unclassified information from Department of Justice press releases on terrorism-related convictions and terrorist attack perpetrators killed in the act, Department of State visa statistics, the 2016 Worldwide Threat Assessment of the US Intelligence Community, and the Department of State Country Reports on Terrorism 2015. This paper does not assess the threat of domestic terrorism.

Key Findings

- DHS I&A assesses that country of citizenship is unlikely to be a reliable indicator of potential terrorist activity. Since the beginning of the Syrian conflict in March 2011, the foreign-born primarily US-based individuals who were inspired by a foreign terrorist organization to participate in terrorism-related activity were citizens of 26 different countries, with no one country representing more than 13.5 percent of the foreign-born total.
- Relatively few citizens of the seven countries impacted by E.O. 13769, compared to neighbor-

ing countries, maintain access to the United States.

- Terrorist groups in Iraq, Syria, and Yemen pose a threat of attacks in the United States while groups in Iran, Libya, Somalia, and Sudan remain regionally focused.

Citizens of Countries Affected by E.O. 13769 Rarely Implicated in US-Based Terrorism

DHS I&A assesses that country of citizenship is unlikely to be a reliable indicator of potential terrorist activity. Since the beginning of the Syrian conflict in March 2011, at least 82 primarily US-based individuals, who died in the pursuit of or were convicted of any terrorism-related federal offense inspired by a foreign terrorist organization, according to a DHS study of Department of Justice press releases on convictions and terrorist attack perpetrators killed in the act.[62*] Of the 82 individuals we identified, slightly more than half were native-born United States citizens. Of the foreign-born individuals, they came from 26 different countries, with no one country representing more than 13.5 percent of the foreign-born total.

- The top seven origin countries of the foreign-born individuals are: Pakistan (5), Somalia (3), and Bangladesh, Cuba, Ethiopia, Iraq, and Uzbekistan (2).

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* For the purposes of this paper, we limited our data to individuals prosecuted under 18 U.S.C. Chapter 133B in support of or inspired by a Foreign Terrorist Organization (FTO). We excluded traveling or attempting to travel overseas to join a FTO and activities unrelated to FTOs, to include purely domestic terrorism.

- Of the seven countries impacted by E.O. 13769 that are not listed above, Iran, Sudan, and Yemen had 1 each, and there were no individuals from Syria.

Limited Access to the United States by Citizens of Impacted Countries

Relatively few citizens of the seven countries impacted by E.O. 13769, compared to neighboring countries, maintain access to the United States. None of the seven countries account for more than 7 percent of the US visas granted in their region—the Middle East and North Africa or Sub-Saharan Africa—in Fiscal Year 2015, according to publicly available Fiscal Year 2015 visa issuance data from the Department of State.[23†]

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† Fiscal Year 2015 is the most recent year we have visa issuance data for both immigrant and non-immigrant visas. A-1, A-2, A-3, C-2, NATO, G-1, G-2, G-3, and G-3 non-immigrant visas were excluded from these calculations to be consistent with section 3(c) in E.O. 13769.

FY15 US Visas Granted as Percentage of Regional Total

Few of the Impacted Countries Have Terrorist Groups that Threaten the West

Terrorist groups in Iraq, Syria, and Yemen pose a threat of attacks in the United States, while groups in Iran, Libya, Somalia, and Sudan are regionally focused, according to the 2016 Worldwide Threat Assessment of the US Intelligence Community and the Department of State Country Reports on Terrorism 2015.

Iran—Designated as a State Sponsor of Terrorism in 1984, Iran continued its terrorist-related activity in 2015, including support for Hizballah, Palestinian terrorist groups in Gaza, and various groups in Iraq and throughout the Middle East, according to the Country Reports on Terrorism 2015.[4] Iran used the Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF) to implement foreign policy goals, provide cover for intel-

ligence operations, and create instability in the Middle East. The IRGC-QF is Iran's primary mechanism for cultivating and supporting terrorists abroad.

Iraq and Syria—The Islamic State of Iraq and the Levant (ISIL) has become the preeminent terrorist threat because of its self-described caliphate in Syria and Iraq, its branches and emerging branches in other countries, and its increasing ability to direct and inspire attacks against a wide range of targets around the world, according to the 2016 Worldwide Threat Assessment.[5] ISIL's narrative supports jihadist recruiting, attracts others to travel to Iraq and Syria, draws individuals and groups to declare allegiance to ISIL, and justifies attacks across the globe.

Libya—Libya has been locked in civil war between two rival governments and affiliated armed groups, according to the 2016 Worldwide Threat Assessment.[6] The 17 December 2015 signing of a UN-brokered agreement to form a Government of National Accord resulted from a year-long political dialogue that sought to end the ongoing civil war and reconcile Libya's rival governments. Extremists and terrorists have exploited the security vacuum to plan and launch attacks in Libya and throughout the region.

Somalia—In 2015, al-Shabaab continued to commit deadly attacks in Somalia, seeking to reverse progress

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[1] DHS I&A; DHS I&A Terrorism-Related Activities Study; 16 FEB 17; DOI 01 MAR 11-31 JAN 17; DHS I&A Terrorism-Related Activities Study

[2] https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXIV.pdf

made by the Federal Government of Somalia and weaken the political will of the African Union Mission in Somalia troop contributing countries, according to the Country Reports on Terrorism 2015.[7]

Sudan—Sudan was designated as a State Sponsor of Terrorism in 1993 due to concerns about support to international terrorist groups, according to the Country Reports on Terrorism 2015.[8] In 2014, members of Hamas were allowed to raise funds, travel, and live in Sudan. However, in 2015 the use of Sudan by Palestinian designated terrorist groups appeared to have declined. The last known shipment was interdicted by Israel in 2014.

Yemen—Al-Qa'ida in the Arabian Peninsula remained a significant threat to Yemen, the region, and to the United States in 2015, as efforts to counter the group were hampered by the ongoing conflict in that country, according to the Country Reports on Terrorism 2015.[9] The Islamic State of Iraq and the Levant in Yemen also exploited the political and security vacuum to strengthen its foothold inside the country.

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[3] https://travel.state.gov/content/dam/visas/Statistics/Non-immigrant-Statistics/NIVDetailTables/FY15%20NIV%20Detail%20Table.xls

[4] https://www.state.gov/j/ct/rls/crt/2015/257520.htm

INTELLIGENCE ASSESSMENT

[redacted]

Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

Homeland Security

Office of Intelligence and Analysis

1 March 20 7

(U//FOUO) Most Foreign-born, US-based Violent Extremists Radicalized after Entering Homeland; Opportunities for Tailored CVE Programs Exist

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(U) Scope

(U//FOUO) This *Assessment* examines the immigration history and radicalization of 88 foreign-born, US-based persons who participated in a terrorism-related activity inspired by at least one named foreign terrorist organization (FTO).* All examined individuals primarily resided in the United States either at the time of their involvement in a terrorism-related activity or prior to their travel to join an FTO. The list of individuals included in this study was derived from academic and government sources, including a Department of Justice (DOJ) list of unsealed international terrorism and terrorism-related cases. The terrorism-related activities these individuals engaged in were identified in US Government sources or reliable media reporting. These activities include conducting or attempting to conduct an attack in the United States, traveling or

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* (U//FOUO) OHS defines radicalization as the process through which an individual changes from a nonviolent belief system to a belief system that includes the willingness to actively advocate, facilitate , or use unlawful violence as a method co effect societal or political change.

attempting to travel from the United States to join an FTO overseas, and providing funds, goods, or logistical assistance to support an FTO. All individuals examined in our study were indicted or killed between March 2011—the start of the Syrian conflict—and December 2016. Individuals who were minors at the time of their indictment or death were not included. Our review did not consider classified or non-disseminated investigative information.

(U//FOUO) This Assessment identifies several factors, some of which are constitutionally protected activity, which we assess contributed to the radicalization of foreign-born, US-based violent extremists mentioned in this report. None of these factors should be viewed as definitive indicators of radicalization to violence absent corroborative information revealing a link to violence or terrorism. This Assessment is intended to inform federal. state, local, tribal, and territorial counterterrorism, law enforcement, and countering violent extremism (CVE) officials, as well as immigrant screening and vetting officials on trends of foreign-born individuals engaged in terrorism activity in the Homeland. It also provides an overview of opportunities to prevent and detect future violent extremist radicalization. The information cutoff date is 31 December 2016.

(U) Key Judgments

(U//FOUO) We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of

screening and vetting officials to prevent their entry because of national security concerns. We base this assessment on our findings that nearly half of the foreign-born, US-based violent extremists examined in our dataset were less than 16 years old when they entered the country and that the majority of foreign-born individuals resided in the United States for more than 10 years before their indictment or death. A separate DHS study that found recent foreign-born US violent extremists began radicalizing, on average, 13 years after their entry to the United States further supports our assessment.

(U//FOUO) We assess nearly all parents who entered the country with minor-age children likely did not espouse a violent extremist ideology at the time they entered or at any time since, suggesting these foreign-born individuals were likely not radicalized by their parents before or after their arrival in the Homeland. We base this judgment on their admissions to the United States by screening and vetting agencies who review all available derogatory information, our review of press interviews of parents after their child was arrested or killed, and the lack of arrests of the parents since their entry.

(U//FOUO) We assess that the integration and mentoring services provided by federal, state or private sector entities to refugees and asylees offer an opportunity to help foreign-born US residents adjust to their new communities and raise their awareness of and resistance to violent extremist narratives and recruiters, and likely increase their resilience to radicalization.

(U//FOUO) The experiences and grievances we assessed as common within these individuals present opportunities for CVE programs focused on integration and mentorship. Such programs could address adolescent immigrants' feelings of isolation, anger, and depression caused by immigration experiences—which could in turn reduce the vulnerability of FTOs to exploit these feelings for recruitment. Program administrators would be positioned to assist adolescents if the administrators are made aware of common radicalization vulnerabilities and behavioral indicators, as well as effective counter-narratives to challenge FTO messaging.

(U//FOUO) Most Foreign-born, US-based Violent Extremists Likely Radicalized after Entering Homeland

(U//FOUO) We assess that most foreign-born, US-based violent extremists likely radicalized several years after their entry to the United States, limiting the ability of screening and vetting officials to prevent their entry because of national security concerns. We base this assessment on our findings that nearly half of the foreign-born, US-based violent extremists examined in our dataset were younger than 16 years old when they entered the country and that the majority of foreign-born individuals resided in the United States for more than 10 years before their indictment or death. A previous DHS study which found recent foreign-born US violent extremists began radicalizing, on average, 13 years after their entry to the United States further supports our assessment.*

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* (U//FOUO) For more information, please see I&A *Intelligence* Assessment "Commonalities in HVE Radicalization to Violence

» (U//FOUO) Miguel Diaz[USPER], who arrived in the United States from Cuba in 1989, likely first displayed signs of radicalization in 2015—26 years after his entry—by posting articles related to the self-proclaimed Islamic State of Iraq and ash-Sham (ISIS) and a picture of himself posing with a firearm on Facebook, according to a DOJ criminal complaint and DHS immigration records.[1,2] Diaz later discussed conducting sniper attacks and scratching "ISIS" into shell casings. He was arrested in April 2015 and subsequently pleaded guilty to being a felon in possession of a firearm. In July 2015, Diaz was sentenced to 10 years in prison followed by three years of supervised release.[3]

» (U//FOUO) Mohimanul Bhuiya[USPER] entered the United States from Bangladesh when he was 11 months old and resided in the country for 24 years before his arrest in 2014 for successfully traveling to Syria and joining ISIS, according to DHS immigration records and reliable press reporting.[4,5] He was likely radicalized by June 2014, when FBI learned that he may have had plans to travel to Syria, according to reliable press reporting.[6,7] In November 2014, he pleaded guilty to providing material support and receiving military training from a FTO.[8]

» (U//FOUO) A separate DHS examination of the radicalization of the seven foreign-born, US-based violent extremists who attempted or succeeded in

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Provide Prevention Opportunities," published 10 February 2017. Some of the numbers cited in this previous paper slightly differ due to scoping differences.

conducting attacks between January 2015 and December 2016 found that they typically entered the United States 15 years before their arrest or attack, and often only began radicalizing two years before they attempted their attack. This suggests that, on average, 13 years passed between the time these foreign-born, US-based violent extremists entered the United States and subsequently began to radicalize.

(U//FOUO) Countries of Birth of foreign-born, US-based Violent Extremists

(U//FOUO) The 88 foreign-born, US-based violent extremists that we examined were born in 33 different countries, none of which holds a majority. Many of the individuals born in these countries were associates of each other, lived in the same area in the United States, and participated in a terrorism-related incident as a group. Four countries—Somalia, Uzbekistan, Bosnia, and Pakistan—comprised the country of birth of about 40 percent of the individuals in our dataset. Some of the individuals in our dataset may have immigrated to the United States from a country other than their place of birth. For example, some of the individuals in our dataset resided in refugee camps in a country other than their birth country prior to immigrating to the United States.

- *(U//FOUO) At least eight of the 13 individuals in our dataset who were born in Somalia were associates of each other and provided material support to ISIS as a group, according to DOJ criminal complaints.*[9,10]

- *(U//FOUO) In 2012, two individuals born in Uzbekistan were arrested for providing material support to the Islamic Jihad Union, according to DOJ criminal complaints.*[11,12] *Separately, four Uzbekistan-born individuals were arrested in 2015 for providing material support to ISIS, according to a DOJ criminal complaint and superseding indictment.*[13,14] *These two groups comprised six of the nine individuals in our dataset who were born in Uzbekistan.*
- *(U//FOUO) All seven individuals born in Bosnia were associates of each other. Six were arrested in 2015 for providing material support to ISIS and one died in 2014 after successfully joining ISIS in Syria, according to DOJ criminal complaints and a press report.*[15,16]
- *(U//FOUO) Two of the seven violent extremists in our dataset who were born in Pakistan were brothers who plotted together to provide material support to al-Qa'ida in the Arabian Peninsula (AQAP), according to a DOJ indictment.*[17]

(U//FOUO) We assess nearly all parents who entered the country with minor-age children likely did not espouse a violent extremist ideology at the time they entered or at any time since, suggesting these foreign-born individuals were likely not radicalized by their parents before or after their arrival in the Homeland. We base this judgment on their admissions to the United States by screening and vetting agencies who review all available derogatory information, our review of press interviews of parents after their child was

arrested or killed, and the lack of arrests of the parents since their entry.

- (U//FOUO) Two months before Somali immigrant Abdirizak Warsame[USPER] was arrested for conspiring to provide material support to ISIS, his mother lectured other parents about the importance of talking with their children about risks stemming from adhering to a violent extremist ideology and the need to work with the FBI, according to press reporting.[18] Warsame was sentenced to 30 months in prison in November 2016 because of his attempt to travel to Syria to join ISIS, according to a press report.[19]
- (U//FOUO) Harlem Suarez's[USPER] family was surprised by his arrest for plotting an attack in support of ISIS in 2015, according to a press report.[20] The family described Suarez, who was born in Cuba, as curious and unable to hurt anything, according to the same report.[21] Suarez is currently awaiting trial, according to another press report.[22]
- (U//FOUO) Jose Pimentel's[USPER] mother publicly apologized to the City of New York after his arrest in 2011, saying she was disappointed with her son's actions, according to multiple press reports.[23,24,25] Pimentel—who immigrated from the Dominican Republic with his family when he was five—was sentenced to 16 years in prison after pleading guilty in February 2014 to terrorism charges related to plotting to conduct an attack in the Homeland, according to a separate press report.[26]

(U//FOUO) Similar Radicalization Factors among Native- and Foreign-born US Violent Extremists

(U//FOUO) Our review of 116 native-born US violent extremists, who were publicly identified as having been arrested or killed between March 2011 and December 2016, showed that many had similar experiences and grievances to the 88 foreign-born violent extremists we examined. We assess that these experiences and grievances probably in part contributed to the radicalization of some native- and foreign-born, US-based violent extremists and included perceived injustices against Muslims in the Homeland and abroad because of US policies, feelings of anger and isolation, and witnessing violence as a child. The lack of extensive open source information detailing some of these US violent extremists' radicalization histories prevented us from identifying motivating factors for all individuals examined in our dataset.

- *(U//FOUO) Native-born brothers Nader Saadeh[USPER] and Alaa Saadeh[USPER]—who both pleaded guilty after their arrest in 2015 for providing material support to ISIS—believed the United States oppressed its own people and failed to protect Muslims, according to DOJ criminal complaints.[27,28] Similarly, Ibrahim Mohammad[USPER], born in the UAE and arrested in 2015 for providing material support to AQAP, believed the United States was actively at war with Islam, according another DOJ criminal complaint.[29]*
- *(U//FOUO) Native-born Josh Van Haften[USPER], who is awaiting his trial for attempting to travel overseas to join ISIS, became isolated from his*

peers after a sexual assault required him to register as a sex offender, according to press reporting.[30] He was told to leave his housing because he was a sex offender, and he was never able to have a romantic relationship, according to a press interview with Van Haften's mother and her partner.[31] The FBI assesses isolation to be one of many factors in Van Haften's radicalization, but not the primary one. Similarly, the now-deceased foreign-born former editor of AQAP's Inspire magazine, Samir Khan, and now-deceased ISIS foreign fighter Abdullah Ramo Pazara felt isolated or different from their communities and peers, according to multiple press reports.[32,33,34]

- *(U//FOUO) At least five foreign-born US violent extremists were exposed to violence or substance abuse as children, according to a review of available press reporting.[35-39] We judge, however, there are likely additional individuals included in our dataset who were also exposed to violence during their childhood, based on our finding that 41 foreign-born US violent extremists in our dataset entered the United States as a refugee, asylee, or child of a refugee or asylee.*

(U//FOUO) CVE Opportunities to Prevent Radicalization of Foreign-born, US-based Individuals

(U//FOUO) We assess that the integration and mentoring services provided by federal, state, and private sector entities to refugees and asylees offer an opportunity to help foreign-born US residents adjust to their new communities and raise their awareness of and

resistance to violent extremist narratives and recruiters, and likely increase their resistance to radicalization. Immigrants not entering the United States as refugees or asylees must prove their ability to provide basic needs for themselves before arriving in the United States, and thus they would not be eligible to receive many of these healthcare, housing, employment, and education services; however, there are many programs available to all immigrants to assist with integration into US society.

- (U) There are a variety of federal, state, local, and nongovernmental programs aimed at helping refugees and asylees integrate into US society by addressing their basic healthcare, housing, employment, and education needs.[40] Additionally, USCIS, through its Citizenship and Integration Grant Program, as of September 2016 awarded $63 million through 308 competitive grants in 37 states to help immigrants prepare and apply for US citizenship, according to USCIS.[41]

- (U) Many nonprofit organizations engage with immigrant communities, including a Georgia-based nonprofit that serves the cultural, psychological, and social-economic needs of refugees and immigrants in Atlanta, according to their website.[42]

(U//FOUO) The experiences and grievances we assessed as common within these individuals present opportunities for CVE programs focused on integration and mentorship. Such programs could address adolescent immigrants' feelings of isolation, anger, and depression caused by immigration experiences—which could in turn reduce the ability of FTOs to exploit these feel-

ings for recruitment. Program administrators would be positioned to assist adolescents if the administrators are made aware of common radicalization vulnerabilities and behavioral indicators, as well as effective counter-narratives to challenge FTO messaging.

- (U//FOUO) Guled Omar[USPER], who was sentenced in 2016 for attempting travel overseas to join ISIS, claimed in a December 2016 press interview that after his older brother traveled to Somalia in 2007 to join al-Shabaab, he was shunned and isolated from the Somali-American community in Minneapolis, which led to his depression, drug use, and taunting by peers.[43]

- (U) Successful programs for adolescent immigrants could include convening youth from varying cultural backgrounds to promote cultural understanding and providing opportunities to counter anti-immigrant attitudes in mainstream culture, according to research published by a State University of New York at Albany[USPER] program called Voices for Change: Immigrant Women and State Policy.[44] Separately, the Department of Health and Human Services' Child Welfare Information Gateway offers online resources for immigrant youth, including a guide on living in America, educational and safety resources for parents, and a handbook for raising children in a new country.[45]

(U//FOUO) We also judge that open discussions with community and religious centers about overseas conflicts and ways that violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individuals who are seeking

answers to their questions from relying exclusively on research conducted online, which is often dominated by FTO messaging that offers only a violent extremist perspective.

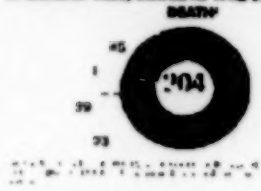
» (U//FOUO) Some individuals in our dataset who became interested in conflict zones or their religion sought to educate themselves on the Internet—where they encountered videos and literature espousing violent extremist ideology—rather than their local religious or community leaders, according to press reporting.[4647] Somali-Americans Abdi Nur[USPER] and Guled Omar—who have since been indicted for attempting to provide material support to ISIS—were asked to leave their respective mosques because of their expressions of violent extremist beliefs, which, in effect, pushed their research underground, where they turned to the Internet and had their nascent violent extremist views reinforced, according to a press report.[48] Abdi Nur was indicted on conspiracy charges for providing material support to ISIS in 2014, according to a DOJ press release.[49]

» (U//FOUO) Abdizirak Warsame stated in his court appearance that he was always listening to one side, referring to the "radical" messages he saw online, according co a press report. Warsame claimed that at the time he did not realize innocent people were being killed, according to the same report, which was likely a reference to terrorists' targeting of civilians.[50]

Most Foreign-born, US-based Violent Extremists Probably Radicalize After Entering the Homeland

AGE OF ENTRY OF FOREIGN-BORN VIOLENT EXTREMISTS

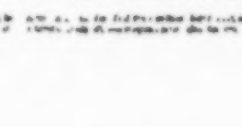
NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS US CITIZENSHIP (USC) STATUS AT TIME OF INDICTMENT OR DEATH[1]



LENGTH OF TIME IN US OF FOREIGN-BORN VIOLENT EXTREMISTS

COUNTRIES OF BIRTH OF FOREIGN-BORN VIOLENT EXTREMISTS

TERRORISM-RELATED ACTIVITIES OF NATIVE- AND FOREIGN-BORN VIOLENT EXTREMISTS[1]



(U) Source Summary Statement

(U//FOUO) This Assessment is based primarily on I&A's review of DHS immigration and travel records and publicly available court documents as well as relevant reliable press reporting. The scope of our study did not include consideration of non-disseminated investigative information.

(U//FOUO) I&A has ***moderate confidence*** *that most foreign-born US violent extremists likely radicalize several years after their entry to the United States, based on a review of court documents and press reporting from which we determined the first known sign of radicalization to violence among recent US violent extremists and a body of USCIS data from which we determined the length of time the individuals examined in our current dataset spent in the United States before their indictment or death. We note that there are challenges in determining the exact date that radicalization began, which is often a personal and individualized process that is difficult to observe. Additional reporting on the online activities of the US violent extremists, as well as information from the US violent extremists themselves or their family and friends about possible indicators of their loved ones' radicalization would further strengthen our confidence in this assessment. Our assessment is further supported by our finding that nearly half of the foreign-born individuals in our dataset entered the United States when they were younger than 16 years*

old, an age group that is typically younger than the age most violent extremists begin radicalizing.

(U//FOUO) We have ***moderate confidence*** *in our assessment that nearly all parents who entered the country with these foreign-born, US-based violent extremists likely did not espouse a violent extremist ideology or exhibit any violent radicalization or mobilization indicators at the time they entered or since. Our assessment is based on a qualitative review of reliable press reporting describing the family life and parents of the individuals in our dataset. Additional information about the parents of these individuals—which is likely contained in immigration screening and vetting interview transcripts related to these individuals and their parents, which we lacked access to—would strengthen our confidence in this assessment.*

(U//FOUO) We have ***moderate confidence*** *that provision of services to refugees and asylees and programs tailored to adolescents offer opportunities to provide CVE programs to address radicalization factors possibly relevant to foreign-born US residents. Our assessment is based on a review of services provided to refugees and asylum seekers and current programs focused on immigrant youth, which, collectively, can address many of the common grievances and experiences of the foreign-born individuals in our dataset*

(U//FOUO) We have ***moderate confidence*** *that open discussions with community and religious centers about overseas conflicts and ways violent extremists may use religion to justify their actions would likely help dissuade some foreign-born, US-based individu-*

als from relying exclusively on Internet research. Our assessment is based on an analysis of current CVE programs and grievances cited by the individuals in our dataset to determine whether these programs would likely address the radicalization factors of these individuals. The inherent challenges involved in proving that CVE efforts have successfully countered radicalization of violent extremists or possible radicalization of vulnerable individuals limit our confidence in this assessment.

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[1] (U); United States District Court, Southern District of Florida; "United States of America v. Miguel Moran Diaz"; 06 APR 2015.

[2] (U); USCIS; CLAIMS 3; SRC9702052653; accessed on 22 DEC 2016; DOI 21 OCT 1996; (U); N400 Application for Naturalization; Extracted information is UNCLASSIFIED; Overall document classification is UNCLASSIFIED .

[3] (U); DOJ Office of Public Affairs; Press Release; "Miami Resident and ISIL Sympathizer Sentenced to 10 Years in Prison for Illegally Possessing a Firearm"; 28 JUL 2015; https://www.justice.gov/opa/pr/miami-resident-and-isil-sympathizer-sentenced-10-years-prison-illegally-possessing-firearm; accessed on 28 OCT 206.

[4] (U); USCIS; CIS; A041544571; accessed on 22 DEC 16; DOI 12 SEP 1990; (U); USCIS A-File; Extracted information is UNCLASSIFIED; Overall document classification is UNCLASSIFIED.

[5] (U); Adam Goldman; *The Washington Post;* "'I am fed up with this evil': How an American went from Ivy League student to disillusioned ISIS fighter"; 30 JUN 2016; https://www.washingtonpost.com/world/national-security/i-am-fed-up-with-this-evil-how-an-american-went-from-ivy-league-student-to-disillusioned-isis-fighter/2016/06/29/155e777e-3e07-11e6-80bc-

d06711fd2125_story.html?utm_term=.f3268b20b17f#comments; accessed on 13 DEC 2016.

6 (U); Adam Goldman; *The Washington Post*; "'I am fed up with this evil': How an American went from Ivy League student to disillusioned ISIS fighter"; 30 JUN 2016; https://www.washingtonpost.com/world/national-security/i-am-fed-up-with-this-evil-how-an-american-went-from-ivy-league-student-to-disillusioned-isis-fighter/2016/06/29/155e777e-3e07-11e6-80bc-d06711fd2125_story.html?utm_term=.f3268b20b17f#comments; accessed on 13 DEC 2016.

7 (U); Dave Urbanski; *The Blaze*; "Ivy League Student Traveled to Syria to Join Islamic State—a Few Months Later, He Was Begging U.S. to Save Him"; 01 JUL 2016; http://www.theblaze.com/stories/2016/07/01/ivy-league-student-traveled-to-syria-to-join-islamic-state-a-few-months-later-he-was-begging-u-s-to-save-him/; accessed on 13 DEC 2016 .

8 (U); Adam Goldman; *The Washington Post*; "'I am fed up with this evil': How an American went from Ivy League student to disillusioned ISIS fighter"; 30 JUN 2016; https://www.washingtonpost.com/world/national-security/i-am-fed-up-with-this-evil-how-an-american-went-from-ivy-league-student-to-disillusioned-isis-fighter/2016/06/29/155e777e-3e07-11e6-80bc-d06711fd2125_story.html?utm_term=.f3268b20b17f#comments; accessed on 13 DEC 2016.

9 (U); United States District Court, the District of Minnesota; "United States of America v . Mohamed Abdihamid Farah, Adnan Abdihamid Farah, Abdurahman Yasin Daud, Zacharia Yusuf Abdurahman, Hanad Mustafe Musse and Guled Ali Omar"; 18 APR 2015.

10 (U); US District Court, District of Minnesota; "United States of American v. Abdullahi Yusuf, Abdi Nur"; Criminal Complaint; 24 NOV 2014.

11 (U); United States District Court, District of Colorado; "United States of America v. Bakhtiyor Jumaev"; Criminal Complaint; 14 MAR 2012.

[12] (U) ; United States District Court, District of Colorado; "United States of America v. Jamshid Muhtorov"; 19 JAN 2012 .

[13] (U); United States District Court, Eastern District of New York; "United States of America v. Abdurasul Hasanovich Juraboev, Akhror Saidakhmetov, and Abror Habibov"; 24 FEB 2015.

[14] (U); United States District Court, Eastern District of New York; "United States of America v. Akhror Saidakhmetov, Abror Habibov, Azizjon Rakhmatov, Akmal Zakirov and Dilkhayot Kasimov"; 09 MAY 2016.

[15] (U); US District Court, Eastern District of Missouri Eastern Division; "United States of America v. Ramiz Zijad Hodzic, Sedina Unkic Hodzic. Nihad Rosic, Mediha Medy Salkicevic, Armin Harcevic and Jasminka Ramic"; 05 FEB 2015.

[16] (U); Robert Patrick; *St. Louis Post-Dispatch*; "Allegations of St. Louis Terrorism Support Rooted Back in Bosnian War;" 11 APR 2015; http://www.stltoday.com/news/local/crime-and-courts/allegations-of-st-louis-terrorism-support-rooted-back-in-bosniarticle_0a3b08c5-29da-5f7c-ab4e-b281f086f29f.html; accessed on 15 DEC 2016.

[17] (U); United States District Court, Southern District of Florida; "United States of America v. Raees Alam Qazi and Sheheryar Alam Qazi"; 30 NOV 2012.

[18] (U); CBS Minnesota; "Abdirizak Mohamed Warsame And ISIS: A Cautionary Tale"; 09 APR 2016; http://minnesota.cbslocal.com/2016/04/09/abdirizak-warsame/; accessed on 07 DEC 2016.

[19] (U); Jennie Lissarrague and Beth McDonough; KSTP-TV; "Day 1: Sentences Vary for 3 Minn. Men Who Pleaded Guilty to Terrorism Charges"; 14 NOV 2016; http://kstp.com/news/somali-minnesotans-terrorism-charges-sentencing/4316829/; accessed on 07 DEC 2016.

[20] (U); Cammy Clark; *Miami Herald*; "Where FBI Sees Terrorist, Keys Family Sees Naïve Young Man;" 07 AUG 2015; http://www.miamiherald.com/news/local/community/florida-keys/article30470679.html; accessed on 04 JAN 2016.

[21] (U); Cammy Clark; *Miami Herald*; "Where FBI Sees Terrorist, Keys Family Sees Naïve Young Man;" 07 AUG 2015; http://www.miamiherald.com/news/local/commnunity/florida-keys/article30470679.html; accessed on 04 JAN 2016.

[22] (U); WPTV; "Trial Delayed Until April for Florida Backpack Bomb Suspect Harlem Suarez"; 23 DEC 2016; http://www.wptv.com/news/state/trial-delayed-until-april-for-florida-backpack-bomb-suspect-harlem-suarez; accessed on 29 DEC 2016.

[23] (U); Ray Sanchez; *Huffington Post*; "Jose Pimentel, New York Bombing Suspect, Was Frustrated By Unemployment, Mother Says"; 22 NOV 2011; http://www.huffingtonpost.com/2011/11/21/jose-pimentel-new-york-bombing-suspect-frustrated-by-unemploymentmother-says_n_1105956 .html; accessed on 07 DEC 2016.

[24] (U); CBS News; "Man pleads guilty in New York City pipe bomb terrorism plot"; 19 FEB 2014; http://www.cbsnews.com/news/man-pleads-guilty-in-new-york-city-pipe-bomb-terrorism-plot/; accessed on 07 DEC 2016.

[25] (U); Patrick Hedlund ; DNAinfo.com; "Mother of Alleged Terrorist Plotter Jose Pimentel Apologizes for Son"; 21 NOV 2011; https://www.dnainfo.com/new-york/20111121/harlem/mother-of-alleged-terrorist-plotter-jose-pimentel-apologizes-for-son; accessed on 07 DEC 2016; (U); Online news service covering neighborhood issues.

[26] (U); CBS News; "Man pleads guilty in New York City pipe bomb terrorism plot"; 19 FEB 2014; http://www.cbsnews.com/news/man-pleads-guilty-in-new-york-city-pipe-bomb-terrorism-plot/; accessed on 07 December 2016.

[27] (U); United States District Court, District of New Jersey; "United States of America v. Alaa Saadeh"; 29 JUN 2015.

[28] (U); United States District Court, District of New Jersey; "United States of America v. Nader Saadeh"; 01 AUG 2015.

[29] (U); United States District Court, Northern District of Ohio; "United States of America v. Yahya Farooq Mohammad, Ibra-

him Zubair Mohammad, Asif Ahmed Salim, and Sultane Roome Salim"; NOV 2015.

[30] (U); Rob Schultz; *Wisconsin State Journal;* "Mother Says Joshua Van Haften, Accused of Trying to Join ISIS, Has Mental Illness;" 11 APR 2015; http://host.madison.com/wjs/news/local/crime_and_courts/mother-says-joshua-van-haften-accused-of-trying-to-join/article_c94fe848-c964-5d14-9e5b-fldfd087c793.html; accessed on 22 DEC 2016.

[31] (U); Rob Schultz; Wisconsin *State Journal;* "Mother Says Joshua Van Haften, Accused of Trying to Join ISIS, Has Mental Illness;" 11 APR 2015; http://host.madison.com/wjs/news/local/crime_and_courts/mother-says-joshua-van-haften-accused-of-trying-tojoin/article_c94fe848-c964-5dt4-9e5b-f1dfd087c793.html; accessed on 22 DEC 2016.

[32] (U); Matthew Chayes, Anthony Destefano, Robert Kessler, Greg Lacour, and Victor Ramos; *Newsday:* "Samir Khan, AI-Qaida Figure, Grew Up On Long Island"; 06 OCT 2011; www/newsday.com/long-island/samir-khan-al-qaida-figure-grew-up-on-long-island; accessed on 16 February 2017 .

[33] (U); Peter Neumann; *Radicalized: New Jihadists and the Threat to the West*; 2016.

[34] (U); Laura Yuen; MPR News; "Guled Omar: The Path to ISIS and The Story You Haven't Heard"; 22 DEC 2016; https://www.mprnews.org/story/2016/12/21/path-to-isis-minnesota-guled-omar-mpr-interviews; accessed on 27 DEC 2016.

[35] (U); Laura Yuen; MPR News; "Guled Omar: The Path to ISIS and The Story You Haven't Heard"; 22 DEC 2016; https://www.mprnews.org/story/2016/12/21/path-to-isis-minnesota-guled-omar-mpr-interviews; accessed on 27 DEC 2016.

[36] (U); Robert Patrick; *St. Louis Post-Dispatch*; "Allegations of St. Louis Terrorism Support Rooted Back in Bosnian War;" 11 APR 2015; http://www.altoday.com/news/local/crime-and-courts/allegations-of-st-louis-terrorism-support-rooted-back-in-bosniarticle_0a3b08c5-29da-5f7c-ab4e-b281f086f29f.html; accessed on 15 DEC 2016.

[37] (U); CBS Minnesota; "Abdirizak Mohamed Warsame And ISIS: A Cautionary Tale"; 09 APR 2016; http://minnesota.cbslocal.com/2016/04/09/abdirizak-warsame/; accessed on 29 DEC 2016.

[38] (U) ; PBS News Hour; "An Extremist's Path to Academia—and Fighting Terrorism;" 29 AUG 216; http://www.pbs.org/newshour/bb/extremists-path-academia-fighting-terrorism/; accessed on 15 DEC 2016.

[39] (U); Sean Rubinsztein-Dunlop; ABC News; "Amina Karroum and Tyler Casey: How a Young Australian Couple Came to Die in Syria;" 08 SEP 2014; accessed on 27 DEC 2016 .

[40] (U); The White House; "Fact Sheet: The Federal Role in Immigrant & Refugee Integration"; 16 JUL 2014; https://www.whitehouse.gov/the-press-office/2014/07/16/fact-sheet-strengthening-communities-welcoming-all-residents; accessed on 21 DEC 2016.

[41] (U); USCIS; "Citizenship and Integration Grant Program"; 01 SEP 2016; https://www.uscis.gov/about-us/citizenship-and-integration-grant-program; accessed on 21 DEC 2016.

[42] (U); Somali American Community Center; "About Us;" 2014; www.somaliaccatl.org/about_us; accessed on 30 DEC 2016; (U); Nonprofit organization's website.

[43] (U); Laura Yuen; MPR News; "Guled Omar: The Path to ISIS and The Story You Haven't Heard"; 22 DEC 2016; https://www.mprnews.org/story/2016/12/21/path-to-isis-minnesota-guled-omar-mpr-interviews; accessed on 27 DEC 2016; (U) News Web site.

[44] (U); ACT for Youth; "Creating Successful Programs for Immigrant Youth"; DEC 2004; http://www.actforyouth.net/resources/pm/pm_creatingsuccess_1204.pdf; accessed on 27 DEC 2016 ; (U); Publication authored by SUNY Albany's Voices for Change program.

[45] (U); Child Welfare Information Gateway; "Helping Immigrant Families Overcome Challenges;" https://www.childwelfare.gov; accessed on 26JAN 2017.

[46] (U); Casey Tolan; Fusion; "How a High School Class Project Led an 18-year-old to Try to Join ISIS;" 13 MAY 2016; http://fusion.net/story/302272/abdullahi-yusuf-minneapolis-isis-trial/; accessed on 28 DEC 2016.

[47] (U); Richard Engel, Ben Plesser, and Tracy Connor; NBC News; "American ISIS Defector: 'I've Let my Nation Down';" 23 MAY 2016; http://www.nbcnews.com/storyline/isis-uncovered/american-isis-defector-i-ve-let-my-nation-down-n578216; accessed on 15 DEC 2016.

[48] (U); Laura Yuen; MPR News; "Guled Omar: The Path to ISIS and The Story You Haven't Heard"; 22 DEC 2016; https://www.mprnews.org/story/2016/12/21/path-to-isis-minnesota-guled-omar-mpr-interviews; accessed on 27 DEC 2016.

[49] (U); US Attorney's Office - District of Minnesota; Press Release; "To Minnesotans Charged with Conspiracy to Provide Material Support to Islamic State of Iraq and the Levant"; 25 NOV 2014; https://www justice gov/usao-mn/pr/two-minnesotans-charged-conspiracy-provide-mateiral-support-islamic-state-iraq-and-levants; accessed on 29 DEC 2016.

[50] (U); CBS Minnesota; "Abdirizak Mohamed Warsame And ISIS: A Cautionary Tale"; 09 APR 2016; http://minnesota.cbslocal.com/2016/04/09/abdirizak-warsame/; accessed on 29 DEC 2016.

DISSENT CHANNEL

SENSITIVE BUT UNCLASSIFIED

TO:
FROM:
SUBJECT: Dissent Channel: Alternatives to Closing Doors in Order to Secure Our Borders

(U) The following is a Dissent Channel message from

(SBU) Summary: We are writing to register our dissent to the State Department's implementation of President Trump's Friday, January 27, 2017 Executive Order on "Protecting The Nation From Foreign Terrorist Entry Into The United States," which, among other things, blocks the Department of State from issuing immigrant and nonimmigrant visas to citizens of Syria, Iraq, Iran, Libya, Somalia, Sudan, and Yemen for a minimum 90 day period with an unclear timeline for when issuance would resume. As consular professionals, Foreign Service Officers, and members of the Civil Service, we see every day the value that "**Secure Borders and Open Doors**" brings to our nation. A policy which closes our doors to over 200 million legitimate travelers in the hopes of preventing a small number of travelers who intend to harm Americans from using the visa system to enter the United States will not achieve its aim of making our country safer. Moreover, such a policy runs counter to core American values of nondiscrimination, fair play, and extending a warm welcome to foreign visitors and immigrants. Alternative solutions are available to address the risk

[46] (U); Casey Tolan; Fusion; "How a High School Class Project Led an 18-year-old to Try to Join ISIS;" 13 MAY 2016; http://fusion.net/story/302272/abdullahi-yusuf-minneapolis-isis-trial/; accessed on 28 DEC 2016.

[47] (U); Richard Engel, Ben Ptesser. and Tracy Connor; NBC News; "American ISIS Defector: 'I've Let my Nation Down';" 23 MAY 2016; http://www.nbcnews.com/storyline/isis-uncovered/american-isis-defector-i-ve-let-my-nation-down-n578216; accessed on 15 DEC 2016.

[48] (U); Laura Yuen; MPR News; "Guled Omar: The Path to ISIS and The Story You Haven't Heard"; 22 DEC 2016; https://www.mprnews.org/story/2016/12/21/path-to-isis-minnesota-guled-omar-mpr-interviews; accessed on 27 DEC 2016.

[49] (U); US Attorney's Office - District of Minnesota; Press Release; "Two Minnesotans Charged with Conspiracy to Provide Material Support to Islamic State of Iraq and the Levant"; 25 NOV 2014; https://www.justice.gov/usao-mn/pr/two-minnesotans-charged-conspiracy-provide-material-support-islamic-state-iraq-and-levants; accessed on 29 DEC 2016.

[50] (U); CBS Minnesota; "Abdirizak Mohamed Warsame And ISIS: A Cautionary Tale"; 09 APR 2016; http://minnesota.cbslocal.com/2016/04/09/abdirizak-warsame/; accessed on 29 DEC 2016.

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of terror attacks which are both more effective and in line with Department of State and American values.

This Ban Does Not Achieve Its Aims—And Will Likely Be Counterproductive

(SBU) This ban, which can only be lifted under conditions which will be difficult or impossible for countries to meet, will not achieve its stated aim of to protect the American people from terrorist attacks by foreign nationals admitted to the United States. Despite the Executive Order's focus on them, a vanishingly small number of terror attacks on U.S. soil have been committed by foreign nationals who recently entered the United States on an immigrant or nonimmigrant visa. Rather, the overwhelming majority of attacks have been committed by native-born or naturalized U.S. citizens—individuals who have been living in the United States for decades, if not since birth. In the isolated incidents of foreign nationals entering the U.S. on a visa to commit acts of terror, the nationals have come from a range of countries, including many (such as Pakistan or Saudi Arabia) which are not covered by the Executive Order.

(SBU) Given the near-absence of terror attacks committed in recent years by Syrian, Iraqi, Irani, Libyan, Somalia, Sudanese, and Yemeni citizens who are in the U.S. in after entering on a visa, this ban will have little practical effect in improving public safety.

(SBU) If this ban will not prevent terror attacks from occurring, what will it do?

- (SBU) It will immediately sour relations with these six countries, as well as much of the Muslim world,

which sees the ban as religiously-motivated. These governments of these countries are important allies and partners in the fight against terrorism, regionally and globally. By alienating them, we lose access the intelligence and resources need to fight the root causes of terror abroad, before an attack occurs within our borders.

- (SBU) It will increase anti-American sentiment. When the 220 million citizens of these countries lose the opportunity to travel to the U.S. overnight, hostility towards the United States will grow. Instead of building bridges to these societies through formal outreach and exchanges and through informal people-to-people contact, we send the message that we consider all nationals of these countries to be an unacceptable security risk. Almost one-third of these countries' combined populations are children under the age of 15; there is no question that their perception of the United States will be heavily colored by this ban. We are directly impact the attitudes of current and future leaders in these societies —including those for whom this may be a tipping point towards radicalization.

- (SBU) It will have an immediate and clear humanitarian impact. Every day foreign nationals come to the United States to seek medical treatment for a child with a rare heart condition, to attend a parent's funeral, or to help a relative in distress. For citizens of these countries, a blanket ban on travel will not just ruin vacation plans but potentially cut off access to life-saving medical treatment or impose terrible humanitarian burdens. While the Execu-

tive Order allows for the Secretary of State or the Secretary of Homeland security to admit travelers from these countries on a case-by-case basis, it is unrealistic to think that this will be feasible to implements for the thousands of aliens with urgent and compelling needs to travel.

- (SBU) It will have a negative impact on the U.S. economy. According to the Department of Commerce, foreign travelers collectively injected almost $250 billion into the U.S. economy in 2015 alone, supporting over one million American jobs. Foreign students along contribute more than $30 billion to the U.S. economy. Preventing travelers from these six countries from spending their money in the U.S. will immediately decrease that amount; more perniciously, this ban can be expected to cause an overall drop in traveler dollars as the U.S. quickly sheds its welcoming "Secure Borders, Open Doors" reputation.

(SBU) The end result of this ban will not be a drop in terror attacks in the United States; rather, it will be a drop in international good will towards Americans and a threat towards our economy.

We Are Better Than This Ban

(SBU) Looking beyond its effectiveness, this ban stands in opposition to the core American and constitutional values that we, as federal employees, took an oath to uphold.

(SBU) The United States is a nation of immigrants, starting from its very origins. The concept that immigrants foreigners are welcome is an essential

element of our society, our government, and our foreign policy. So, too, is the concept that we are all equal under the law and that we as a nation abhor discrimination, whether it is based on race, religion, sex, or national origin. Combined together, that means we have a *special* obligation to maintain an immigration system that is as free as possible from discrimination, that does not have implied or actual religious tests, and that views individuals as individuals, not as part of stereotyped groups.

(SBU) The Executive Order frames the ban as a 90-day suspension of entry for these nationals until their countries can set up arrangements to provide adequate information to determine that an individual seeking a benefit is who the individual claims to be and is not a security or public-safety threat. This is a high, vague, and nebulous bar. In some cases, the governments of these countries may be wholly incapable of providing this information; in others, the government may be unwilling. In either case, individual citizens will pay the price—a situation which runs counter to U.S. values of fair play and offering equal opportunities to all.

(SBU) Banning travelers from these seven countries calls back to some of the worst times in our history. Law enacted in the 1920s and which lasted through the 1960s severely restricted immigration based on national origin and, in some cases, race. The decision to restrict the freedom of Japanese-Americans in the U.S. and foreign citizens who wanted to travel to or settle in the U.S. during the 1940s has been a source of lasting shame for many in our country. Decades from now, we will look back and realize we made the same mis-

takes our predecessors: shutting borders in a kn jerk reaction instead of setting up systems of che that protect our interests and our values.

Alternative Ways Forward

(SBU) Just as equality and multiculturalism are co American values, so too is pragmatism. And there a pragmatic ways to achieve our common goals to prot the American people from terrorist attacks by fore nationals admitted to the United States and to secur better and more prosperous future.

(SBU) Rather than a blanket ban on the travel of ov 200 million citizens, we need to strengthen our target and interagency approach to deterring, detecting, a subverting attacks. We should not focus our scre ing and vetting on specific nationalities at the exper of missing the forest for the trees but should turn thos tools to cover the full range of sources of terror, includir those who may hold "friendly" or even U.S. passport

(SBU) There is no question that the visa process can improved and refined to better detect individuals w intend to exploit United States immigration laws f malevolent purposes. We need to expand existir interagency cooperation between the different el ments of the government responsible for border sec rity and protection of the homeland. This includ cooperation with state, local, campus, and tribal l enforcement, who in many cases are best situated detect threats. The Visa Security Program wh embeds Department of Homeland Security staff i consular sections around the world has proven effectiveness of incorporating a law enforcement p

spective into the visa process; this approach should be expanded.

(SBU) Continuous vetting program for visa holders—which looks at all visa holders, not just those of specific nationalities—allows our law enforcement and intelligence bodies to act on new information and to focus on individuals that may become radicalized. This vetting should be expanded and made more comprehensive. Likewise, the Visa Viper Program, which allows posts overseas to report on potential threats, should be strengthened to become a more reliable source of intelligence.

(SBU) The Department of State and the U.S. government already has numerous tools already at its disposal to secure its visa process: access to law enforcement databases, biometric screening, Security Advisory Opinions, continuous vetting. If we haven't accomplished our goals so far, then let's strengthen and improve these tools. And let's develop new tools: cutting-edge data analytics, social media tracking, data mining, aggressive outreach.

(SBU) We do not need to place a blanket ban that keeps 220 million people—men, women, and children—from entering the United States to protect our homeland. We do not need to alienate entire societies to stay safe. And we do not need to sacrifice our reputation as a nation which is open and welcoming to protect our families. It is well within our reach to create a visa process which is more secure, which reflects our American values, and which would make the Department proud.

Q&A: Protecting the Nation From Foreign Terrorist Entry To The United States

Release Date: March 6, 2017

March 6, 2017 11:30 a.m. EST
Office of Public Affairs
Contact: 202-282-8010

Q1. Who is subject to the suspension of entry under the Executive Order?

Per the Executive Order, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen, who are outside the United States and who did not have a valid visa at 5 p.m. Eastern Standard Time on January 27, 2017, and do not have a valid visa on the effective date of this order are not eligible to enter the United States while the temporary suspension remains in effect. Thus any individual who had a valid visa either on January 27, 2017 (prior to 5:00 PM) or holds a valid visa on the effective date of the Executive Order is not barred from seeking entry.

Q2. Will "in-transit" travelers within the scope of the Executive Order be denied entry into the United States and returned to their country of origin?

Those individuals who are traveling on valid visas and arrive at a U.S. port of entry will still be permitted to seek entry into the United States. All foreign nationals traveling with a visa must continue to satisfy all requirements for entry, including demonstrating that they are admissible. Additional information on applying for admission to the United States is available on

CBP.gov. (https://www.cbp.gov/travel/international-visitors/applying-admission-united-states)

Q3. I am a national from one of the six affected countries currently overseas and in possession of a valid visa, but I have no prior travel to the United States. Can I travel to the United States?

Per the Executive Order, foreign nationals from Sudan, Syria, Iran, Libya, Somalia, and Yemen who have valid visas will not be affected by this Executive Order. No visas will be revoked solely based on this Executive Order.

Q4. I am presently in the United States in possession of a valid single entry visa but I am a national of one of the six impacted countries. Can I travel abroad and return to the United States?

Regardless of the Executive Order, your visa is not valid for multiple entries into the Unites States. While the Executive Order does not apply to those within the United States and your travel abroad is not limited, a valid visa or other document permitting you to travel to and seek admission to the United States is still required for any subsequent entry to the United States.

Q5. I am presently in the United States in possession of a valid multiple entry visa but am a national of one of the six affected countries, can I travel abroad and return to the United States?

Yes. Individuals within the United States with valid multiple entry visas on the effective date of the order are eligible for travel to and from the United States,

provided the visa remains valid and the traveler is otherwise admissible. All foreign nationals traveling with a visa must satisfy all admissibility requirements for entry. Additional information on applying for admission to the United States is available on CBP.gov. (https://www.cbp.gov/travel/international-visitors/applying-admission-united-states)

Q6. I am from one of the six countries, currently in the United States in possession of a valid visa and have planned overseas travel. My visa will expire while I am overseas, can I return to the United States?

Travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers who do not have a valid visa due to its expiration while abroad must obtain a new valid visa prior to returning to the United States.

Q7. Will the Department of Homeland Security (DHS) and the Department of State (DOS) be revoking the visas of persons ineligible to travel under the revised Executive Order?

Visas will not be revoked solely as a result of the Executive Order. The Department of State has broad authority under Section 221(i) of the Immigration and Nationality Act to revoke visas.

Q8. What is the process for overseas travelers affected by the Executive Order to request a waiver?

Waivers for overseas travelers without a valid U.S. visa will be adjudicated by the Department of State in conjunction with a visa application.

Q9. How are returning refugees and asylees affected by the Executive Order?

Returning refugees and asylees, i.e., individuals who have already been granted asylum or refugee status in the United States, are explicitly excepted from this Executive Order. As such, they may continue to travel consistent with existing requirements.

Q10. Are first-time arrival refugees with valid /travel documents allowed to travel to the United States?

Yes, but only refugees, regardless of nationality, whose travel was already formally scheduled by the Department of State, are permitted to travel to the United States and seek admission. The Department of State will have additional information.

Q11. Will unaccompanied minors within the scope of the Executive Order be denied boarding and or denied entry into the United States?

The Executive Order applies to those who do not have valid visas. Any individuals, including children, who seek entry to the United States must have a valid visa (or other approved travel document) before travel to the United States. The Secretary of State may issue a waiver on a case-by-case basis when in the national interest of the United States. With such a waiver, a visa may be issued.

Q12. Is DHS complying with all court orders?

DHS is complying, and will continue to comply, with all court orders in effect.

Q13. When will the Executive Order be implemented?

The Executive Order is effective at 12:01 A.M., Eastern Standard Time, on March 16, 2017.

Q14. Will the Executive Order impact Trusted Traveler Program membership?

No. Currently, CBP does not have reciprocal agreements for a Trusted Traveler Program with any of the countries designated in the Executive Order.

Q15. When will CBP issue guidance to both the field and airlines regarding the Executive Order?

CBP will issue guidance and contact stakeholders to ensure timely implementation consistent with the terms of the Executive Order.

Q16. Will first-time arrivals with valid immigrant visas be allowed to travel to the U.S.?

Yes. Individuals holding valid visas on the effective date of the Executive Order or on January 27, 2017 prior to 5:00 PM do not fall within the scope of the Order.

Q17. Does this affect travelers at all ports of entry?

Yes, this Executive Order applies to travelers who are applying for entry into the United States at any port of entry—air, land, or sea—and includes preclearance locations.

Q18. What does granting a waiver to the Executive Order mean? How are waivers applied to individual cases?

Per the Executive Order, the Departments of Homeland Security and State can review individual cases and grant waivers on a case-by-case basis if a foreign national demonstrates that his or her entry into the United States is in the national interest, will not pose a threat to national security, and that denying entry during the suspension period will cause undue hardship.

Q19. Does "from one of the six countries" mean citizen, national, or born in?

The Executive Order applies to both nationals and citizens of the six countries.

Q20. How does the lawsuit/stay affect DHS operations in implementing this Executive Order?

Questions regarding the application of specific federal court orders should be directed to the Department of Justice.

Q21. Will nationals of the six countries with valid green cards (lawful permanent residents of the United States) be allowed to return to the United States?

Per the Executive Order, the suspension of entry does not apply to lawful permanent residents of the United States.

Q22. Can a dual national who holds nationality with one of the six designated countries traveling with a passport from an unrestricted country travel to the United States?

The Executive Order exempts from its scope any dual national of one of the six countries when the individual is traveling on a passport issued by a different non-designated country.

Q23. Can a dual national who holds nationality with one of the six designated countries and is currently overseas, apply for an immigrant or nonimmigrant visa to the United States?

Please contact the Department of State for information about how the Executive Order applies to visa applicants.

Q24. Are international students, exchange visitors, and their dependents from the six countries (such as F, M, or J visa holders) included in the Executive Order? What kind of guidance is being given to foreign students from these countries legally in the United States?

The Executive Order does not apply to individuals who are within the United States on the effective date of the Order or to those individuals who hold a valid visa. Visas which were provisionally revoked solely as a result of the enforcement of Executive Order 13769 are valid for purposes of administering this Executive Order. Individuals holding valid F, M, or J visas may continue to travel to the United States on those visas if they are otherwise valid.

Please contact the State Department for information about how the Executive Order applies to visa applicants.

Q25. What happens to international students, exchange visitors or their dependents from the six countries, such as F, M or J visa holders if their visa expires while the Executive Order is in place and they have to depart the country?

The Executive Order does not affect F, M, or J visa holders if they currently have a valid visa on the effective date or held a valid visa on January 27, 2017 prior to the issuance of the Executive Order. With that said, travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers whose visa expires after the effective date of the Executive Order must obtain a new, valid visa to return to the United States.

Q26. Can U.S. Citizenship and Immigration Services (USCIS) continue refugee interviews?

The Departments of Homeland Security and State will conduct interviews as appropriate and consistent with the Executive Order. However, the Executive Order suspends decisions on applications for refugee status, unless the Secretary of Homeland Security and the Secretary of State jointly determine, on a case-by-case basis, that the entry of an individual as a refugee is in the national interest and would not pose a threat to the security or welfare of the United States.

Q27. Can the exception for refugee admission be used for Refugee/Asylee Relative Petitions (Form I-730) cases where a family member is requesting a beneficiary follow to join?

No. Individuals who already have valid visas or travel documents that permit them to travel to the United States are exempt from the Executive Order. To the extent that an individual does not yet have such documents, please contact the Department of State.

Q28. Does the Executive Order apply to those currently being adjudicated for naturalization or adjustment of status?

USCIS will continue to adjudicate Applications for Naturalization (Form N-400) and Applications to Register Permanent Residence or Adjust Status (Form I-485) and grant citizenship consistent with existing practices.

Q29. Will landed immigrants of Canada affected by the Executive Order be eligible for entry to the United States?

Landed immigrants of Canada who hold passports from one of the six countries are eligible to apply for a visa, and coordinate a waiver, at a location within Canada.

Q30. Has CBP issued clear guidance to CBP officers at ports of entry regarding the Executive Order? CBP has and will continue to issue any needed guidance to the field with respect to this Executive Order.

Q31. What coordination is being done between CBP and the carriers?

CBP has been and will remain in continuous communication with the airlines through CBP regional carrier liaisons. In addition, CBP will hold executive level calls with airlines in order to provide guidance, answer questions, and address concerns.

Q32. What additional screening will nationals of restricted countries (as well as any visa applications) undergo as a result of the Executive Order?

In making admission and visa eligibility determinations, DHS and DOS will continue to apply all appropriate security vetting procedures.

Q33. Why is a temporary suspension warranted?

The Executive Order signed on March 6, 2017, allows for the proper review and establishment of standards to prevent terrorist or criminal infiltration by foreign nationals. The Executive Order protects the United States from countries compromised by terrorism and ensures a more rigorous vetting process. Protecting the American people is the highest priority of our Government and this Department.

Congress and the Obama Administration designated these six countries as countries of concern due to the national security risks associated with their instability and the prevalence of terrorist fighters in their territories. The conditions in the six designated countries present a recognized threat, warranting additional scrutiny of their nationals seeking to travel to and enter the United States. In order to ensure that the

U.S. Government can conduct a thorough and comprehensive analysis of the national security risks, the Executive Order imposes a 90-day suspension on entry to the United States of nationals of those countries.

Based on commitments from the Government of Iraq, the suspension of entry in this Executive Order will not apply to nationals of Iraq. Iraq has taken steps to increase their cooperation with the United States in the vetting of Iraqi nationals and as such it was determined that a temporary suspension is not warranted.

DHS will faithfully execute the immigration laws and the President's Executive Order, and will treat all of those we encounter humanely and with professionalism.

Q34. Why is a suspension of the refugee program warranted?

Some of those who have entered the United States as refugees have also proved to be threats to our national security. For example, in October 2014, an individual admitted to the United States as a refugee from Somalia, and who later became a naturalized U.S. citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction in connection with a plot to set off a bomb at a Christmas tree-lighting ceremony in Portland, Oregon. The Federal Bureau of Investigation has reported that approximately 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations.

Q35. How were the six countries designated in the Executive Order selected?

The six countries, Iran, Libya, Somalia, Sudan, Syria, and Yemen, had already been identified as presenting concerns about terrorism and travel to the United States.Specifically, the suspension applies to countries referred to in, or designated under—except Iraq—section 217(a)(12) of the INA, 8 U.S.C. § 1187(a)(12).In that provision Congress restricted use of the Visa Waiver Program by dual nationals of, and aliens recently present in, (A) Syria and Iraq, (B) any country designated by the Secretary of State as a state sponsor of terrorism (currently Iran, Syria, and Sudan), and (C) any other country designated as a country of concern by the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence.In 2016, the former Secretary of Homeland Security designated Libya, Somalia, and Yemen as additional countries of concern regarding aliens recently present in those countries.

For the purposes of this Executive Order, although Iraq has been previously identified, based on commitments from the Government of Iraq, the suspension of entry in this Executive Order will not apply to nationals of Iraq. However, those who are dual nationals of Iraq and aliens recently present in Iraq continue to have restricted use of the Visa Waiver Program.

On the basis of negotiations that have taken place between the Government of Iraq and the U.S. Department of State in the last month, Iraq will increase cooperation with the U.S. Government on the vetting of its citizens applying for a visa to travel to the United

States.As such it was determined that a temporary suspension with respect to nationals of Iraq is not warranted at this time.

Q36. Why was Iraq treated differently in this Executive Order?

The close cooperative relationship between the United States and the democratically-elected Iraqi government, the strong U.S. diplomatic presence in Iraq, the significant presence of U.S. forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment.In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have earned special status.In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken steps to provide additional information about its citizens for purposes of our immigration decisions.Accordingly, it is no longer necessary to include Iraq in the temporary suspension applicable to the other six countries, but visa applications and applications for admission to the United States by Iraqi nationals will be subjected to additional scrutiny to determine if they have connections with ISIS or other terrorist organizations.

Q37. Are Iraqi nationals subject to the Executive Order? Will they require a waiver to travel to the United States?

This Executive Order does not presently suspend the entry of nationals of Iraq. However, all travelers must have a valid travel document in order to travel to the United States. Admissibility will be determined

by a CBP officer upon arrival at a Port of Entry. Please contact the Department of State for information related to visa eligibility and application.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. No. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

[Filed: Mar. 15, 2017]

ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

On January 27, 2017, the President of the United States issued Executive Order No. 13,769 entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States." *See* 82 Fed. Reg. 8977 (Jan. 27, 2017). On March 6, 2017, the President issued another Executive Order, No. 13,780, identically entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States." (the "Executive Order"). *See* 82 Fed. Reg. 13209 (Mar. 6, 2017). The Executive Order revokes Executive Order No. 13,769 upon taking effect.[1] Exec. Order §§ 13, 14. Like its predecessor, the Executive Order restricts the entry of foreign

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[1] By its terms, the Executive Order becomes effective as of March 16, 2017 at 12:01 a.m., Eastern Daylight Time—*i.e.*, March 15, 2017 at 6:01 p.m. Hawaii Time. Exec. Order § 14.

nationals from specified countries and suspends entrants from the United States refugee program for specified periods of time.

Plaintiffs State of Hawai'i ("State") and Ismail Elshikh, Ph.D. seek a nationwide temporary restraining order that would prohibit the Federal Defendants[2] from "enforcing or implementing Sections 2 and 6 of the Executive Order" before it takes effect. Pls.' Mot. for TRO 4, Mar. 8, 2017, ECF No. 65.[3] Upon evaluation of the parties' submissions, and following a hearing on March 15, 2017, the Court concludes that, on the record before it, Plaintiffs have met their burden of establishing a strong likelihood of success on the merits of their Establishment Clause claim, that irreparable injury is likely if the requested relief is not issued, and that the balance of the equities and public interest counsel in favor of granting the requested relief. Accordingly, Plaintiffs' Motion for TRO (ECF. No. 65) is granted for the reasons detailed below.

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[2] Defendants in the instant action are: Donald J. Trump, in his official capacity as President of the United States; the U.S. Department of Homeland Security ("DHS"); John F. Kelly, in his official capacity as Secretary of DHS; the U.S. Department of State; Rex Tillerson, in his official capacity as Secretary of State; and the United States of America.

[3] Plaintiffs filed a Second Amended Complaint for Declaratory and Injunctive Relief ("SAC") on March 8, 2017 simultaneous with their Motion for TRO. SAC, ECF. No. 64.

BACKGROUND

I. The President's Executive Orders

A. Executive Order No. 13,769

Executive Order No. 13,769 became effective upon signing on January 27, 2017. *See* 82 Fed. Reg. 8977. It inspired several lawsuits across the nation in the days that followed.[4] Among those lawsuits was this one: On February 3, 2017, the State filed its complaint and an initial motion for TRO, which sought to enjoin, nationwide, Sections 3(c), 5(a)-(c), and 5(e) of Executive Order No. 13,769. Pls.' Mot. for TRO, Feb. 3, 2017, ECF No. 2.

This Court did not rule on the State's initial TRO motion because later that same day, the United States District Court for the Western District of Washington entered a nationwide preliminary injunction enjoining the Government from enforcing the same provisions of Executive Order No. 13,769 targeted by the State here. *See Washington v. Trump*, 2017 WL 462040. As such, the Court stayed this case, effective February 7, 2017, specifying that the stay would continue "as long as the

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[4] *See, e.g., Mohammed v. United States*, No. 2:17-cv-00786-AB-PLA (C.D. Cal. Jan. 31, 2017); *City & Cty. of San Francisco v. Trump*, No. 3:17-cv-00485-WHO (N.D. Cal. Jan. 31, 2017); *Louhghalam v. Trump*, Civil Action No. 17-cv-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Int'l Refugee Assistance Project v. Trump*, No. 8:17-0361-TDC (D. Md. filed Feb. 7, 2017); *Darweesh v. Trump*, 17 Civ. 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017); *Aziz v. Trump*, — F. Supp. 3d ----, 2017 WL 580855 (E.D. Va. Feb. 13, 2017); *Washington v. Trump*, Case No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), *emergency stay denied*, 847 F.3d 1151 (9th Cir. 2017). This list is not exhaustive.

February 3, 2017 injunction entered in *Washington v. Trump* remain[ed] in full force and effect, or until further order of this Court." ECF Nos. 27 & 32.

On February 4, 2017, the Government filed an emergency motion in the Ninth Circuit Court of Appeals seeking a stay of the *Washington* TRO, pending appeal.[5] *See Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 4, 2017). The Ninth Circuit heard oral argument on February 7, after which it denied the emergency motion via written Order dated February 9, 2017. *See* Case No. 17-35105, ECF Nos. 125 (Tr. of Hr'g), 134 (Filed Order for Publication at 847 F.3d 1151).

On March 8, 2017, the Ninth Circuit granted the Government's unopposed motion to voluntarily dismiss the appeal. *See* Order, No. 17-35105 (9th Cir. Mar. 8, 2017), ECF No. 187. As a result, the same sections of Executive Order No. 13,769 initially challenged by the State in the instant action remain enjoined as of the date of this Order.

B. The New Executive Order

Section 2 of the new Executive Order suspends from "entry into the United States" for a period of 90 days, certain nationals of six countries referred to in Section 217(a)(12) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*: Iran, Libya, Somalia,

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[5] The Government also requested "an immediate administrative stay pending full consideration of the emergency motion for a stay pending appeal" on February 4, 2017 (Emergency Mot. to Stay, No. 17-35105 (9th Cir.), ECF No. 14), which the Ninth Circuit panel swiftly denied (Order, No. 17-35105 (9th Cir.), ECF No. 15).

Sudan, Syria, and Yemen." 8 U.S.C. § 1187(a)(12); Exec. Order § 2(c). The suspension of entry applies to nationals of these six countries who (1) are outside the United States on the new Executive Order's effective date of March 16, 2017; (2) do not have a valid visa on that date, and (3) did not have a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017 (the date of the prior Executive Order, No. 13,769). Exec. Order § 3(a).

The 90-day suspension does not apply to: (1) lawful permanent residents; (2) any foreign national admitted to or paroled into the United States on or after the Executive Order's effective date (March 16, 2017); (3) any individual who has a document other than a visa, valid on the effective date of the Executive Order or issued anytime thereafter, that permits travel to the United States, such as an advance parole document; (4) any dual national traveling on a passport not issued by one of the six listed countries; (5) any foreign national traveling on a diplomatic-type or other specified visa; and (6) any foreign national who has been granted asylum, any refugee already admitted to the United States, or any individual granted withholding of removal, advance parole, or protection under the Convention Against Torture. *See* Exec. Order § 3(b).

Under Section 3(c)'s waiver provision, foreign nationals of the six countries who are subject to the suspen-

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[6] Because of the "close cooperative relationship" between the United States and the Iraqi government, the Executive Order declares that Iraq no longer merits inclusion in this list of countries, as it was in Executive Order No. 13,769. Iraq "presents a special case." Exec. Order § 1(g).

sion of entry may nonetheless seek entry on a case-by-case basis. The Executive Order includes the following list of circumstances when such waivers "could be appropriate:"

> (i) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other longterm activity, is outside the United States on the effective date of the Order, seeks to reenter the United States to resume that activity, and denial of reentry during the suspension period would impair that activity;
>
> (ii) the foreign national has previously established significant contacts with the United States but is outside the United States on the effective date of the Order for work, study, or other lawful activity;
>
> (iii) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;
>
> (iv) the foreign national seeks to enter the United States to visit a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;
>
> (v) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(vi) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States Government;

(vii) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOAI), 22 U.S.C. § 288 et seq., traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under IOIA;

(viii) the foreign national is a landed Canadian immigrant who applies for admission at a land border port of entry or a preclearance location located in Canada; or

(ix) the foreign national is traveling as a United States Government sponsored exchange visitor.

Exec. Order § 3(c).

Section 6 of the Executive Order suspends the U.S. Refugee Admissions Program for 120 days. The suspension applies both to travel into the United States and to decisions on applications for refugee status for the same period. *See* Exec. Order § 6(a). It excludes refugee applicants who were formally scheduled for transit by the Department of State before the March 16, 2017 effective date. Like the 90-day suspension, the 120-day suspension includes a waiver provision that allows the Secretaries of State and DHS to admit refugee applicants on a case-by-case basis. *See* Exec.

Order § 6(c). The Executive Order identifies examples of circumstances in which waivers may be warranted, including: where the admission of the individual would allow the United States to conform its conduct to a pre-existing international agreement or denying admission would cause undue hardship. Exec. Order § 6(c). Unlike Executive Order No. 13,769, the new Executive Order does not expressly refer to an individual's status as a "religious minority" or refer to any particular religion, and it does not include a Syria-specific ban on refugees.

Section 1 states that the purpose of the Executive Order is to "protect [United States] citizens from terrorist attacks, including those committed by foreign nationals." Section 1(h) identifies two examples of terrorism-related crimes committed in the United States by persons entering the country either "legally on visas" or "as refugees":

> [1] In January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses. [2] [I]n October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction[.]

Exec. Order § 1(h).

By its terms, the Executive Order also represents a response to the Ninth Circuit's decision in *Washington v. Trump*. *See* 847 F.3d 1151. According to the Government, it "clarifies and narrows the scope of Execu-

tive action regarding immigration, extinguishes the need for emergent consideration, and eliminates the potential constitutional concerns identified by the Ninth Circuit." *See* Notice of Filing of Executive Order 4-5, ECF No. 56.

It is with this backdrop that we turn to consideration of Plaintiffs' restraining order application.

II. Plaintiffs' Motion For TRO

Plaintiffs' Second Amended Complaint (ECF No. 64) and Motion for TRO (ECF No. 65) contend that portions of the new Executive Order suffer from the same infirmities as those provisions of Executive Order No. 13,769 enjoined in *Washington*, 847 F.3d 1151. Once more, the State asserts that the Executive Order inflicts constitutional and statutory injuries upon its residents, employers, and educational institutions, while Dr. Elshikh alleges injuries on behalf of himself, his family, and members of his Mosque. SAC ¶ 1.

Plaintiffs allege that the Executive Order subjects portions of the State's population, including Dr. Elshikh and his family, to discrimination in violation of both the Constitution and the INA, denying them their right, among other things, to associate with family members overseas on the basis of their religion and national origin. The State purports that the Executive Order has injured its institutions, economy, and sovereign interest in maintaining the separation between church and state. SAC ¶¶ 4-5.

According to Plaintiffs, the Executive order also results in "their having to live in a country and in a State where there is the perception that the Government has established a disfavored religion." SAC ¶ 5.

Plaintiffs assert that by singling out nationals from the six predominantly Muslim countries, the Executive Order causes harm by stigmatizing not only immigrants and refugees, but also Muslim citizens of the United States. Plaintiffs point to public statements by the President and his advisors regarding the implementation of a "Muslim ban," which Plaintiffs contend is the tacit and illegitimate motivation underlying the Executive Order. *See* SAC ¶¶ 35-51. For example, Plaintiffs point to the following statements made contemporaneously with the implementation of Executive Order No. 13,769 and in its immediate aftermath:

> 48. In an interview on January 25, 2017, Mr. Trump discussed his plans to implement "extreme vetting" of people seeking entry into the United States. He remarked: "[N]o, it's not the Muslim ban. But it's countries that have tremendous terror. . . . [I]t's countries that people are going to come in and cause us tremendous problems."
>
> 49. Two days later, on January 27, 2017, President Trump signed an Executive Order entitled, "Protecting the Nation From Foreign Terrorist Entry into the United States."
>
> 50. The first Executive Order [No. 13,769] was issued without a notice and comment period and without interagency review. Moreover, the first Executive Order was issued with little explanation of how it could further its stated objective.
>
> 51. When signing the first Executive Order [No. 13,769], President Trump read the title, looked up, and said: "We all know what that means." President Trump said he was "establishing a new

vetting measure to keep radical Islamic terrorists out of the United States of America," and that: "We don't want them here."

. . . .

58. In a January 27, 2017 interview with Christian Broadcasting Network, President Trump said that persecuted Christians would be given priority under the first Executive Order. He said (once again, falsely): "Do you know if you were a Christian in Syria it was impossible, at least very tough to get into the United States? If you were a Muslim you could come in, but if you were a Christian, it was almost impossible and the reason that was so unfair, everybody was persecuted in all fairness, but they were chopping off the heads of everybody but more so the Christians. And I thought it was very, very unfair. So we are going to help them."

59. The day after signing the first Executive Order [No. 13,769], President Trump's advisor, Rudolph Giuliani, explained on television how the Executive Order came to be. He said: "When [Mr. Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"

60. The President and his spokespersons defended the rushed nature of their issuance of the first Executive Order [No. 13,769] on January 27, 2017, by saying that their urgency was imperative to stop the inflow of dangerous persons to the United States. On January 30, 2017, President Trump tweeted: "If the ban were announced with a one week notice, the 'bad' would rush into our country during that

> week." In a forum on January 30, 2017 at George Washington University, White House spokesman Sean Spicer said: "At the end of the day, what was the other option? To rush it out quickly, telegraph it five days so that people could rush into this country and undermine the safety of our nation?" On February 9, 2017, President Trump claimed he had sought a one-month delay between signing and implementation, but was told by his advisors that "you can't do that because then people are gonna pour in before the toughness."

SAC ¶¶ 48-51, 58-60 (footnotes and citations omitted).

Plaintiffs also highlight statements by members of the Administration prior to the signing of the new Executive Order, seeking to tie its content to Executive Order No. 13,769 enjoined by the *Washington* TRO. In particular, they note that:

> On February 21, Senior Advisor to the President, Stephen Miller, told Fox News that the new travel ban would have the same effect as the old one. He said: "Fundamentally, you're still going to have the same basic policy outcome for the country, but you're going to be responsive to a lot of very technical issues that were brought up by the court and those will be addressed. But in terms of protecting the country, those basic policies are still going to be in effect."

SAC ¶ 74(a) (citing *Miller: New order will be responsive to the judicial ruling; Rep. Ron DeSantis: Congress has gotten off to a slow start, The First 100 Days* (Fox News television broadcast Feb. 21, 2017), transcript *available at* https://goo.gl/wcHvHH (rush tran-

script)). Plaintiffs argue that, in light of these and similar statements "where the President himself has repeatedly and publicly espoused an improper motive for his actions, the President's action must be invalidated." Pls.' Mem. in Supp. of Mot. for TRO 2, ECF No. 65-1.

In addition to these accounts, Plaintiffs describe a draft report from the DHS, which they contend undermines the purported national security rationale for the Executive Order. *See* SAC ¶ 61 (citing SAC, Ex. 10, ECF No. 64-10). The February 24, 2017 draft report states that citizenship is an "unlikely indicator" of terrorism threats against the United States and that very few individuals from the seven countries included in Executive Order No. 13,769 had carried out or attempted to carry out terrorism activities in the United States. SAC ¶ 61 (citing SAC, Ex. 10, ECF No. 64-10). According to Plaintiffs, this and other evidence demonstrates the Administration's pretextual justification for the Executive Order.

Plaintiffs assert the following causes of action: (1) violation of the Establishment Clause of the First Amendment (Count I); (2) violation of the equal protection guarantees of the Fifth Amendment's Due Process Clause on the basis of religion, national origin, nationality, or alienage (Count II); (3) violation of the Due Process Clause of the Fifth Amendment based upon substantive due process rights (Count III); (4) violation of the procedural due process guarantees of the Fifth Amendment (Count IV); (5) violation of the INA due to discrimination on the basis of nationality, and exceeding the President's authority under Sections 1182(f) and 1185(a) (Count V); (6) substantially burdening the

exercise of religion in violation of the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 200bb-1(a) (Count VI); (7) substantive violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706 (2)(A)-(C), through violations of the Constitution, INA, and RFRA (Count VII); and (8) procedural violation of the APA, 5 U.S.C. § 706 (2)(D) (Count VIII).

Plaintiffs contend that these alleged violations of law have caused and continue to cause them irreparable injury. To that end, through their Motion for TRO, Plaintiffs seek to temporarily enjoin Defendants from enforcing and implementing Sections 2 and 6 of the Executive Order. Mot. for TRO 4, ECF No. 65. They argue that "both of these sections are unlawful in all of their applications:" Section 2 discriminates on the basis of nationality, Sections 2 and 6 exceed the President's authority under 8 U.S.C. §§ 1182(f) and 1185(a), and both provisions are motivated by anti-Muslim animus. TRO Mem. 50, Dkt. No. 65-1. Moreover, Plaintiffs assert that both sections infringe "on the 'due process rights' of numerous U.S. citizens and institutions by barring the entry of non-citizens with whom they have close relationships." TRO Mem. 50 (quoting *Washington*, 847 F.3d at 1166).

Defendants oppose the Motion for TRO. The Court held a hearing on the matter on March 15, 2017, before the Executive Order was scheduled to take effect.

DISCUSSION

I. Plaintiffs Have Demonstrated Standing At This Preliminary Phase

A. Article III Standing

Article III, Section 2 of the Constitution permits federal courts to consider only "cases" and "controversies." *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "Those two words confine 'the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process.'" *Id.* (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

"At bottom, 'the gist of the question of standing' is whether petitioners have 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.'" *Catholic League for Religious & Civil Rights v. City & Cty. of San Francisco*, 624 F.3d 1043, 1048 (9th Cir. 2010) (en banc) (quoting *Massachusetts*, 549 U.S. at 517)).

"At this very preliminary stage of the litigation, the [Plaintiffs] may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their TRO motion to meet their burden." *Washington*, 847 F.3d at 1159 (citing *Lujan*, 504 U.S. at 561). "With these allegations and evidence, the [Plaintiffs] must make a 'clear showing of each element of standing.'" *Id.* (quoting *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 907 (2014)). At this preliminary stage of the proceedings, on the record presented, Plaintiffs meet the threshold Article III standing requirements.

B. The State Has Standing

The State alleges standing based both upon injuries to its proprietary interests and to its quasi-sovereign interests, *i.e.*, in its role as *parens patriae*.[7] Just as the Ninth Circuit panel in *Washington* concluded on a similar record that the alleged harms to the states' proprietary interests as operators of their public universities were sufficient to support standing, the Court concludes likewise here. The Court does not reach the State's alternative standing theory based on the pro-

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[7] The State's *parens patriae* theory focuses on the Executive Order

> subject[ing] citizens of Hawai'i like Dr. Elshikh to discrimination and marginalization while denying all residents of the State the benefits of a pluralistic and inclusive society. Hawai'i has a quasi-sovereign interest in 'securing [its] residents from the harmful effects of discrimination.' *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 609 (1982). The [Executive] Order also harms Hawai'i by debasing its culture and tradition of ethnic diversity and inclusion.

TRO Mem. 48, ECF No. 65-1.

tection of the interests of its citizens as *parens patriae*. *See Washington*, 847 F.3d at 1168 n.5 ("The States have asserted other proprietary interests and also presented an alternative standing theory based on their ability to advance the interests of their citizens as *parens patriae*. Because we conclude that the States' proprietary interests as operators of their public universities are sufficient to support standing, we need not reach those arguments.").

Hawaii primarily asserts two proprietary injuries stemming from the Executive Order. First, the State alleges the impacts that the Executive Order will have on the University of Hawaii system, both financial and intangible. The University is an arm of the State. *See* Haw. Const. art. 10, §§ 5, 6; Haw. Rev. Stat. ("HRS") § 304A-103. The University recruits students, permanent faculty, and visiting faculty from the targeted countries. *See, e.g.*, Suppl. Decl. of Risa E. Dickson ¶¶ 6-8, Mot. for TRO, Ex. D-1, ECF No. 66-6. Students or faculty suspended from entry are deterred from studying or teaching at the University, now and in the future, irrevocably damaging their personal and professional lives and harming the educational institutions themselves. *See id.*

There is also evidence of a financial impact from the Executive Order on the University system. The University recruits from the six affected countries. It currently has twenty-three graduate students, several permanent faculty members, and twenty-nine visiting faculty members from the six countries listed. Suppl. Dickson Decl. ¶ 7. The State contends that any prospective recruits who are without visas as of March 16, 2017 will not be able to travel to Hawaii to attend the

University. As a result, the University will not be able to collect the tuition that those students would have paid. Suppl. Dickson Decl. ¶ 8 ("Individuals who are neither legal permanent residents nor current visa holders will be entirely precluded from considering our institution."). These individuals' spouses, parents, and children likewise would be unable to join them in the United States. The State asserts that the Executive Order also risks "dissuad[ing] some of [the University's] current professors or scholars from continuing their scholarship in the United States and at [the University]." Suppl. Dickson Decl. ¶ 9.

The State argues that the University will also suffer non-monetary losses, including damage to the collaborative exchange of ideas among people of different religions and national backgrounds on which the State's educational institutions depend. Suppl. Dickson Decl. ¶¶ 9-10, ECF no. 66-6; *see also* Original Dickson Decl. ¶ 13, Mot. for TRO, Ex. D-2, ECF, 66-7; SAC ¶ 94. This will impair the University's ability to recruit and accept the most qualified students and faculty, undermine its commitment to being "one of the most diverse institutions of higher education" in the world, Suppl. Dickson Decl. ¶ 11, and grind to a halt certain academic programs, including the University's Persian Language and Culture program, *id.* ¶ 8. *Cf. Washington*, 847 F.3d at 1160 ("[The universities] have a mission of 'global engagement' and rely on such visiting students, scholars, and faculty to advance their educational goals.").

These types of injuries are nearly indistinguishable from those found to support standing in the Ninth Circuit's decision in *Washington*. *See* 847 F.3d at 1161 ("The necessary connection can be drawn in at most

two logical steps: (1) the Executive Order prevents nationals of seven countries from entering Washington and Minnesota; (2) as a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave. And we have no difficulty concluding that the States' injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution and an injunction barring its enforcement.").

The second proprietary injury alleged Hawaii alleges is to the State's main economic driver: tourism. The State contends that the Executive Order will "have the effect of depressing international travel to and tourism in Hawai'i," which "directly harms Hawaii's businesses and, in turn, the State's revenue." SAC ¶ 100, ECF No. 64. *See also* Suppl. Decl. of Luis P. Salaveria ¶¶ 6-10, Mot. for TRO, Ex. C-1, ECF No. 66-4 ("I expect, given the uncertainty the new executive order and its predecessor have caused to international travel generally, that these changing policies may depress tourism, business travel, and financial investments in Hawaii."). The State points to preliminary data from the Hawaii Tourism Authority, which suggests that during the interval of time that the first Executive Order was in place, the number of visitors to Hawai'i from the Middle East dropped (data including visitors from Iran, Iraq, Syria and Yemen). *See* Suppl. Decl. of George Szigeti, ¶¶ 5-8, Mot. for TRO, Ex. B-1, ECF No. 66-2; *see also* SAC ¶ 100 (identifying 278 visitors in January 2017, compared to 348 visitors from that same region in

January 2016).[8] Tourism accounted for $15 billion in spending in 2015, and a decline in tourism has a direct effect on the State's revenue. *See* SAC ¶ 18. Because there is preliminary evidence that losses of current and future revenue are traceable to the Executive Order, this injury to the State's proprietary interest also appears sufficient to confer standing. *Cf. Texas v. United States*, 809 F.3d 134, 155-56 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (holding that the "financial loss[es]" that Texas would bear, due to having to grant drivers licenses, constituted a concrete and immediate injury for standing purposes).

For purposes of the instant Motion for TRO, the State has preliminarily demonstrated that: (1) its universities will suffer monetary damages and intangible harms; (2) the State's economy is likely to suffer a loss of revenue due to a decline in tourism; (3) such harms can be sufficiently linked to the Executive Order; and (4) the State would not suffer the harms to its proprietary interests in the absence of implementation of the Executive Order. Accordingly, at this early stage of the litigation, the State has satisfied the requirements of Article III standing.[9]

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[8] This data relates to the prior Executive Order No. 13,769. At this preliminary stage, the Court looks to the earlier order's effect on tourism in order to gauge the economic impact of the new Executive Order, while understanding that the provisions of the two differ. Because the new Executive Order has yet to take effect, its precise economic impact cannot presently be determined.

[9] To the extent the Government argues that the State does not have standing to bring an Establishment Clause violation on its own behalf, the Court does not reach this argument. *Cf. Wash-*

C. Dr. Elshikh Has Standing

Dr. Elshikh is an American citizen of Egyptian descent and has been a resident of Hawai'i for over a decade. Declaration of Ismail Elshikh ¶ 1, Mot. for TRO, Ex. A, ECF No. 66-1. He is the Imam of the Muslim Association of Hawai'i and a leader within Hawaii's Islamic community. Elshikh Decl. ¶ 2. Dr. Elshikh's wife is of Syrian descent, and their young children are American citizens. Dr. Elshikh and his family are Muslim. Elshikh Decl. ¶¶ 1, 3. His mother-in-law, also Muslim, is a Syrian national without a visa, who last visited the family in Hawaii in 2005. Elshikh Decl. ¶¶ 4-5.

In September 2015, Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother. On January 31, 2017, Dr. Elshikh called the National Visa Center and learned that his mother-in-law's visa application had been put on hold and would not proceed to the next stage of the process because of the implementation of Executive Order No. 13,769. Elshikh Decl. ¶ 4. Thereafter, on March 2, 2017, during the pendency of the nationwide injunction imposed by *Wash-*

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ington, 847 F.3d at 1160 n.4 ("The Government argues that the States may not bring Establishment Clause claims because they lack Establishment Clause rights. Even if we assume that States lack such rights, an issue we need not decide, that is irrelevant in this case because the States are asserting the rights of their students and professors. Male doctors do not have personal rights in abortion and yet any physician may assert those rights on behalf of his female patients." (citing *Singleton v. Wulff*, 428 U.S. 106, 118 (1976))). Unlike in *Washington* where there was no individual plaintiff, Dr. Elshikh has standing to assert an Establishment Clause violation, as discussed herein.

ington, Dr. Elshikh received an email from the National Visa Center advising that his mother-in-law's visa application had progressed to the next stage and that her interview would be scheduled at an embassy overseas. Although no date was given, the communication stated that most interviews occur within three months. Elshikh Decl. ¶ 4. Dr. Elshikh fears that although she has made progress toward obtaining a visa, his mother-in-law will be unable to enter the country if the new Executive Order is implemented. Elshikh Decl. ¶ 4. According to Plaintiffs, despite her pending visa application, Dr. Elshikh's mother-in-law would be barred in the short-term from entering the United States under the terms of Section 2(c) of the Executive Order, unless she is granted a waiver, because she is not a current visa holder.

Dr. Elshikh has standing to assert his claims, including an Establishment Clause violation. Courts observe that the injury-in-fact prerequisite can be "particularly elusive" in Establishment Clause cases because plaintiffs do not typically allege an invasion of a physical or economic interest. Despite that, a plaintiff may nonetheless show an injury that is sufficiently concrete, particularized, and actual to confer standing. *See Catholic League*, 624 F.3d at 1048-49; *Vasquez v. Los Angeles Cty.*, 487 F.3d 1246, 1250 (9th Cir. 2007) ("The concept of a 'concrete' injury is particularly elusive in the Establishment Clause context."). "The standing question, in plain English, is whether adherents to a religion have standing to challenge an official condemnation by their government of their religious views[.] Their 'personal stake' assures the 'concrete adverseness' required."

Catholic League, 624 F.3d at 1048-49. In Establishment Clause cases—

> [e]ndorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message." Plaintiffs aver that not only does the resolution make them feel like second-class citizens, but that their participation in the political community will be chilled by the [government's] hostility to their church and their religion.

Id. at 1048-49 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). Dr. Elshikh attests that he and his family suffer just such injuries here. He declares that the effects of the Executive Order are "devastating to me, my wife and children." Elshikh Decl. ¶ 6, ECF No. 66-1.

Like his children, Dr. Elshikh is "deeply saddened by the message that [both Executive Orders] convey—that a broad travel-ban is 'needed' to prevent people from certain Muslim countries from entering the United States." Elshikh Decl. ¶ 1 ("Because of my allegiance to America, and my deep belief in the American ideals of democracy and equality, I am deeply saddened by the passage of the Executive Order barring nationals from now-six Muslim majority countries from entering the United States."); *id.* ¶ 3 ("My children] are deeply affected by the knowledge that the United States—their own country—would discriminate against individuals who are of the same ethnicity as them, including members of their own family, and who hold

the same religious beliefs. They do not fully understand why this is happening, but they feel hurt, confused, and sad.").

"Muslims in the Hawai'i Islamic community feel that the new Executive Order targets Muslim citizens because of their religious views and national origin. Dr. Elshikh believes that, as a result of the new Executive Order, he and members of the Mosque will not be able to associate as freely with those of other faiths." SAC ¶ 90. These injuries are sufficiently personal, concrete, particularized, and actual to confer standing in the Establishment Clause context.

The final two aspects of Article III standing—causation and redressability—are also satisfied. Dr. Elshikh's injuries are traceable to the new Executive Order and, if Plaintiffs prevail, a decision enjoining portions of the Executive Order would redress that injury. *See Catholic League*, 624 F.3d at 1053. At this preliminary stage of the litigation, Dr. Elshikh has accordingly carried his burden to establish standing under Article III.

II. Ripeness

"While standing is primarily concerned with who is a proper party to litigate a particular matter, ripeness addresses when litigation may occur." *Lee v. Oregon*, 107 F.3d 1382, 1387 (9th Cir. 1997). "[I]n many cases, ripeness coincides squarely with standing's injury in fact prong." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). In fact, the ripeness inquiry is often "characterized as standing on a timeline." *Id.* "A claim is not ripe for adjudication if it rests upon 'contingent future events that may

not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985)).

The Government argues that "the only concrete injury Elshikh alleges is that the Order 'will prevent [his] mother-in-law'—a Syrian national who lacks a visa —from visiting Elshikh and his family in Hawaii." These claims are not ripe, according to the Government, because there is a visa waiver process that Elshikh's mother-in-law has yet to even initiate. Govt. Mem. in Opp'n to Mot. for TRO (citing SAC ¶ 85), ECF No. 145.

The Government's premise is not true. Dr. Elshikh alleges direct, concrete injuries to both himself and his immediate family that are independent of his mother-in-law's visa status. *See, e.g.*, SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3.[10] These alleged injuries have already occurred and will continue to occur once the Executive Order is implemented and enforced—the injuries are not contingent ones. *Cf. 281 Care Comm. v. Arneson*, 638 F.3d 621, 631 (8th Cir. 2011) ("Plaintiffs' alleged injury is not based on speculation about a particular future prosecution or the defeat of a particular ballot

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[10] There is no dispute that Dr. Elshikh's mother-in-law does not currently possess a valid visa, would be barred from entering as a Syrian national by Section 2(c) of the Executive Order, and has not yet applied for a waiver under Section 3(c) of the Executive Order. Since the Executive Order is not yet effective, it is difficult to see how she could. None of these propositions, however, alter the Court's finding that Dr. Elshikh has sufficiently established, at this preliminary stage, that he has suffered an injury-in-fact separate and apart from his mother-in-law that is sufficiently concrete, particularized, and actual to confer standing.

question. . . . Here, the issue presented requires no further factual development, is largely a legal question, and chills allegedly protected First Amendment expression."); *see also Arizona Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003) ("[W]hen the threatened enforcement effort implicates First Amendment [free speech] rights, the inquiry tilts dramatically toward a finding of standing.").

The Court turns to the merits of Plaintiffs' Motion for TRO.

III. Legal Standard: Preliminary Injunctive Relief

The underlying purpose of a TRO is to preserve the status quo and prevent irreparable harm before a preliminary injunction hearing is held. *Granny Goose Foods*, 415 U.S. 423, 439 (1974); *see also Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006).

The standard for issuing a temporary restraining order is substantially identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citation omitted).

"[I]f a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the other two

Winter factors are satisfied." *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (emphasis by *Shell Offshore*)).

For the reasons that follow, Plaintiffs have met this burden here.

IV. Analysis of TRO Factors: Likelihood of Success on the Merits

The Court turns to whether Plaintiffs sufficiently establish a likelihood of success on the merits of their Count I claim that the Executive Order violates the Establishment Clause of the First Amendment. Because a reasonable, objective observer—enlightened by the specific historical context, contemporaneous public statements, and specific sequence of events leading to its issuance—would conclude that the Executive Order was issued with a purpose to disfavor a particular religion, in spite of its stated, religiously-neutral purpose, the Court finds that Plaintiffs, and Dr. Elshikh in particular, are likely to succeed on the merits of their Establishment Clause claim.[11]

A. Establishment Clause

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). To determine whether the Executive Order runs afoul of that command, the Court is guided by the three-part test for Establishment Clause claims

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[11] The Court expresses no views on Plaintiffs' due-process or INA-based statutory claims.

set forth in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). According to *Lemon*, government action (1) must have a primary secular purpose, (2) may not have the principal effect of advancing or inhibiting religion, and (3) may not foster excessive entanglement with religion. *Id.* "Failure to satisfy any one of the three prongs of the *Lemon* test is sufficient to invalidate the challenged law or practice." *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1076-77 (9th Cir. 2010). Because the Executive Order at issue here cannot survive the secular purpose prong, the Court does not reach the balance of the criteria. *See id.* (noting that it is unnecessary to reach the second or third *Lemon* criteria if the challenged law or practice fails the first test).

B. The Executive Order's Primary Purpose

It is undisputed that the Executive Order does not facially discriminate for or against any particular religion, or for or against religion versus non-religion. There is no express reference, for instance, to any religion nor does the Executive Order—unlike its predecessor—contain any term or phrase that can be reasonably characterized as having a religious origin or connotation.

Indeed, the Government defends the Executive Order principally because of its religiously neutral text—"[i]t applies to six countries that Congress and the prior Administration determined posed special risks of terrorism. [The Executive Order] applies to *all* individuals in those countries, regardless of their religion." Gov't. Mem. in Opp'n 40. The Government does not stop there. By its reading, the Executive Order could

not have been religiously motivated because "the six countries represent only a small fraction of the world's 50 Muslim-majority nations, and are home to less than 9% of the global Muslim population . . . [T]he suspension covers *every* national of those countries, including millions of non-Muslim individuals[.]" Gov't. Mem. in Opp'n 42.

The illogic of the Government's contentions is palpable. The notion that one can demonstrate animus toward any group of people only by targeting all of them at once is fundamentally flawed. The Court declines to relegate its Establishment Clause analysis to a purely mathematical exercise. *See Aziz*, 2017 WL 580855, at *9 (rejecting the argument that "the Court cannot infer an anti-Muslim animus because [Executive Order No. 13,769] does not affect all, or even most, Muslims," because "the Supreme Court has never reduced its Establishment Clause jurisprudence to a mathematical exercise. It is a discriminatory purpose that matters, no matter how inefficient the execution" (citation omitted)). Equally flawed is the notion that the Executive Order cannot be found to have targeted Islam because it applies to *all individuals* in the six referenced countries. It is undisputed, using the primary source upon which the Government itself relies, that these six countries have overwhelmingly Muslim populations that range from 90.7% to 99.8%.[12] It would therefore be no paradigmatic leap to conclude that targeting these countries likewise targets Islam. Cer-

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[12] *See* Pew-Templeton Global Religious Futures Project, Muslim Population by Country (2010), *available at* http://www.globalreligiousfutures.org/religions/muslims.

tainly, it would be inappropriate to conclude, as the Government does, that it does not.

The Government compounds these shortcomings by suggesting that the Executive Order's neutral text is what this Court must rely on to evaluate purpose. Govt. Mem. in Opp'n at 42-43 ("[C]ourts may not 'look behind the exercise of [Executive] discretion' taken 'on the basis of a facially legitimate and bona fide reason.'"). Only a few weeks ago, the Ninth Circuit commanded otherwise: "It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims." *Washington*, 847 F.3d at 1167-68 (citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) ("Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality."); *Larson*, 456 U.S. at 254-55 (holding that a facially neutral statute violated the Establishment Clause in light of legislative history demonstrating an intent to apply regulations only to minority religions); and *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977) (explaining that circumstantial evidence of intent, including the historical background of the decision and statements by decisionmakers, may be considered in evaluating whether a governmental action was motivated by a discriminatory purpose)). The Supreme Court has been even more emphatic: courts may not "turn a blind eye to the context in which [a] policy arose." *McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 866 (2005) (citation and quotation

signals omitted).[13] "[H]istorical context and 'the specific sequence of events leading up to'" the adoption of a challenged policy are relevant considerations. *Id.* at 862; *see also Aziz*, 2017 WL 580855, at *7.

A review of the historical background here makes plain why the Government wishes to focus on the Executive Order's text, rather than its context. The record before this Court is unique. It includes significant and unrebutted evidence of religious animus driving the promulgation of the Executive Order and its related predecessor. For example—

> In March 2016, Mr. Trump said, during an interview, "I think Islam hates us." Mr. Trump was asked, "Is there a war between the West and radical Islam, or between the West and Islam itself?" He replied: "It's very hard to separate. Because you don't know who's who."

SAC ¶ 41 (citing *Anderson Cooper 360 Degrees: Exclusive Interview With Donald Trump* (CNN television broadcast Mar. 9, 2016, 8:00 PM ET), transcript *available at* https://goo.gl/y7s2kQ)). In that same interview, Mr. Trump stated: "But there's a tremendous hatred. And we have to be very vigilant. We have to be very careful. And we can't allow people coming into this country who have this hatred of the United States . . . [a]nd of people that are not Muslim."

Plaintiffs allege that "[l]ater, as the presumptive Republican nominee, Mr. Trump began using facially

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[13] In *McCreary*, the Supreme Court examined whether the posting of successive Ten Commandments displays at two county courthouses violated the Establishment Clause. 545 U.S. at 850-82.

neutral language, at times, to describe the Muslim ban." SAC ¶ 42. For example, they point to a July 24, 2016 interview:

> Mr. Trump was asked: "The Muslim ban. I think you've pulled back from it, but you tell me." Mr. Trump responded: "I don't think it's a rollback. In fact, you could say it's an expansion. I'm looking now at territories. People were so upset when I used the word Muslim. Oh, you can't use the word Muslim. Remember this. And I'm okay with that, because I'm talking territory instead of Muslim."

SAC ¶ 44; Ex. 7 (*Meet the Press* (NBC television broadcast July 24, 2016), transcript *available at* https://goo.gl/jHc6aU). And during an October 9, 2016 televised presidential debate, Mr. Trump was asked:

> "Your running mate said this week that the Muslim ban is no longer your position. Is that correct? And if it is, was it a mistake to have a religious test?" Mr. Trump replied: "The Muslim ban is something that in some form has morphed into a[n] extreme vetting from certain areas of the world." When asked to clarify whether "the Muslim ban still stands," Mr. Trump said, "It's called extreme vetting."

SAC ¶ 45 (citing The American Presidency Project, *Presidential Debates: Presidential Debate at Washington University in St. Louis, Missouri* (Oct. 9, 2016), *available at* https://goo.gl/iIzf0A)).

The Government appropriately cautions that, in determining purpose, courts should not look into the "veiled psyche" and "secret motives" of government decisionmakers and may not undertake a "judicial psychoanalysis of a drafter's heart of hearts." Govt. Opp'n at

40 (citing *McCreary*, 545 U.S. at 862). The Government need not fear. The remarkable facts at issue here require no such impermissible inquiry. For instance, there is nothing "*veiled*" about this press release: "Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States.[]" SAC ¶ 38, Ex. 6 (Press Release, Donald J. Trump for President, *Donald J. Trump Statement on Preventing Muslim Immigration* (Dec. 7, 2015), *available at* https://goo.gl/D3OdJJ)). Nor is there anything "*secret*" about the Executive's motive specific to the issuance of the Executive Order:

> Rudolph Giuliani explained on television how the Executive Order came to be. He said: "When [Mr. Trump] first announced it, he said, 'Muslim ban.' He called me up. He said, 'Put a commission together. Show me the right way to do it legally.'"

SAC ¶ 59, Ex. 8. On February 21, 2017, commenting on the then-upcoming revision to the Executive Order, the President's Senior Adviser, Stephen Miller, stated, "Fundamentally, [despite "technical" revisions meant to address the Ninth Circuit's concerns in *Washington*,] you're still going to have the same basic policy outcome [as the first]." SAC ¶ 74.

These plainly-worded statements,[14] made in the months leading up to and contemporaneous with the signing of the Executive Order, and, in many cases, made by the Executive himself, betray the Executive Order's stated secular purpose. Any reasonable, objective observer would conclude, as does the Court for purposes of the instant Motion for TRO, that the stated secular purpose of the Executive Order is, at the very least, "secondary to a religious objective" of temporar-

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[14] There are many more. *See, e.g.*, Br. of The Roderick and Solange MacArthur Justice Center as Amicus Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 204, at 19-20 ("It's not unconstitutional keeping people out, frankly, and until we get a hold of what's going on. And then if you look at Franklin Roosevelt, a respected president, highly respected. Take a look at Presidential proclamations back a long time ago, 2525, 2526, and 2527 what he was doing with Germans, Italians, and Japanese because he had to do it. Because look we are at war with radical Islam.") (quoting Michael Barbaro and Alan Rappeport, *In Testy Exchange, Donald Trump Interrupts and 'Morning Joe' Cuts to Commercial*, New York Times (Dec. 8, 2015), *available at* https://www.nytimes.com/politics/first-draft/2015/12/08/in-testy-exchange-donaldtrump-interrupts-and-morning-joe-cuts-to-commercial/)); Br. of Muslim Advocates et al. as Amici Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 198, at 10-11 ("On June 13, 2016, after the attack on a nightclub in Orlando, Florida, Mr. Trump said in a speech: 'I called for a ban after San Bernardino, and was met with great scorn and anger, but now many are saying I was right to do so.' Mr. Trump then specified that the Muslim ban would be 'temporary,' 'and apply to certain 'areas of the world when [sic] there is a proven history of terrorism against the United States, Europe or our allies, until we understand how to end these threats.'") (quoting Transcript: Donald Trump's national security speech, *available at* http://www.politico.com/story/2016/06/transcript-donald-trump-national-security- speech-22427).

ily suspending the entry of Muslims. *See McCreary*, 545 U.S. at 864.[15]

To emphasize these points, Plaintiffs assert that the stated national security reasons for the Executive Order are pretextual. Two examples of such pretext include the security rationales set forth in Section 1(h):

> "[I]n January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses." [Exec. Order] § 1(h). "And in October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction[.]" *Id.* Iraq is no longer included in the ambit of the travel ban, *id.*, and the Order states that a waiver could be granted for a foreign national that is a "young child." *Id.* § 3(c)(v).

TRO Mem. 13. Other indicia of pretext asserted by Plaintiffs include the delayed timing of the Executive Order, which detracts from the national security urgency claimed by the Administration, and the Executive Order's focus on nationality, which could have the

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[15] This Court is not the first to examine these issues. In *Aziz v. Trump*, United States District Court Judge Leonie Brinkema determined that plaintiffs were likely to succeed on the merits of their Establishment Clause claim as it related to Executive Order No. 13,769. Accordingly, Judge Brinkema granted the Commonwealth of Virginia's motion for preliminary injunction. *Aziz v. Trump*, ___ F. Supp. 3d ___, 2017 WL 580855, at *7-*10 (E.D. Va. Feb. 13, 2017).

paradoxical effect of "bar[ring] entry by a Syrian national who has lived in Switzerland for decades, but not a Swiss national who has immigrated to Syria during its civil war," revealing a "gross mismatch between the [Executive] Order's ostensible purpose and its implementation and effects." Pls.' Reply 20 (citation omitted).

While these additional assertions certainly call the motivations behind the Executive Order into greater question,[16] they are not necessary to the Court's Establishment Clause determination. *See Aziz*, 2017 WL 580855, at *8 (the Establishment Clause concerns addressed by the district court's order "do not involve an assessment of the merits of the president's national security judgment. Instead, the question is whether [Executive Order No. 13,769] was animated by national security concerns at all, as opposed to the impermissible notion of, in the context of entry, disfavoring one religious group, and in the context of refugees, favoring another religious group").

Nor does the Court's preliminary determination foreclose future Executive action. As the Supreme Court noted in *McCreary*, in preliminarily enjoining the third iteration of a Ten Commandments display, "we do not decide that the [government's] past actions forever taint any effort on their part to deal with the subject matter." *McCreary*, 545 U.S. at 873-74; *see also Felix v. City of Bloomfield*, 841 F.3d 848, 863

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[16] *See also* Br. of T.A., a U.S. Resident of Yemeni Descent, as Amicus Curiae in Supp. of Pls.' Mot. for TRO, ECF No. 200, at 15-25 (detailing evidence contrary to the Executive Order's national security justifications).

(10th Cir. 2016) ("In other words, it is possible that a government may begin with an impermissible purpose, or create an unconstitutional effect, but later take affirmative actions to neutralize the endorsement message so that "adherence to a religion [is not] relevant in any way to a person's standing in the political community." (quoting *Lynch v. Donnelly*, 465 U.S. 668, 687 (1984) (O'Connor, J., concurring))). Here, it is not the case that the Administration's past conduct must forever taint any effort by it to address the security concerns of the nation. Based upon the current record available, however, the Court cannot find the actions taken during the interval between revoked Executive Order No. 13,769 and the new Executive Order to be "genuine changes in constitutionally significant conditions." *McCreary*, 545 U.S. at 874.[17] The Court recognizes that "purpose needs to be taken seriously under the Establishment Clause and needs to be understood in light of context; an implausible claim that governmental purpose has changed should not

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[17] The Tenth Circuit asked: "What would be enough to meet this standard?"

> The case law does not yield a ready answer. But from the above principles we conclude that a government cure should be (1) purposeful, (2) public, and (3) at least as persuasive as the initial endorsement of religion. It should be purposeful enough for an objective observer to know, unequivocally, that the government does not endorse religion. It should be public enough so that people need not burrow into a difficult-to-access legislative record for evidence to assure themselves that the government is not endorsing a religious view. And it should be persuasive enough to countermand the preexisting message of religious endorsement.

Felix, 841 F.3d 863-64.

carry the day in a court of law any more than in a head with common sense." *Id.* Yet, context may change during the course of litigation, and the Court is prepared to respond accordingly.

Last, the Court emphasizes that its preliminary assessment rests on the peculiar circumstances and specific historical record present here. *Cf. Aziz*, 2017 WL 580855, at *9 ("The Court's conclusion rests on the highly particular 'sequence of events' leading to this specific [Executive Order No. 13,769] and the dearth of evidence indicating a national security purpose. The evidence in this record focuses on the president's statements about a 'Muslim ban' and the link Giuliani established between those statements and the [Executive Order].") (citing *McCreary*, 545 U.S. at 862).

V. Analysis of TRO Factors: Irreparable Harm

Dr. Elshikh has made a preliminary showing of direct, concrete injuries to the exercise of his Establishment Clause rights. *See, e.g.*, SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3. These alleged injuries have already occurred and likely will continue to occur upon implementation of the Executive Order.

Indeed, irreparable harm may be *presumed* with the finding of a violation of the First Amendment. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury") (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also Washington*, 847 F.3d at 1169 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes

irreparable injury.'")) (additional citations omitted). Because Dr. Elshikh is likely to succeed on the merits of his Establishment Clause claim, the Court finds that the second factor of the *Winter* test is satisfied—that Dr. Elshikh is likely to suffer irreparable injury in the absence of a TRO.

VI. Analysis of TRO Factors: The Balance of Equities and Public Interest Weigh in Favor of Granting Emergency Relief

The final step in determining whether to grant the Plaintiffs' Motion for TRO is to assess the balance of equities and examine the general public interests that will be affected. Here, the substantial controversy surrounding this Executive Order, like its predecessor, illustrates that important public interests are implicated by each party's positions. *See Washington*, 847 F.3d at 1169. For example, the Government insists that the Executive Order is intended "to protect the Nation from terrorist activities by foreign nationals admitted to the United States[.]" Exec. Order, preamble. National security is unquestionably important to the public at large. Plaintiffs and the public, on the other hand, have a vested interest in the "free flow of travel, in avoiding separation of families, and in freedom from discrimination." *Washington*, 847 F.3d at 1169-70.

As discussed above, Plaintiffs have shown a strong likelihood of succeeding on their claim that the Executive Order violates First Amendment rights under the Constitution. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (emphasis added) (citing

Elrod, 427 U.S. at 373); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[E]nforcement of an unconstitutional law is always contrary to the public interest." (citing *Lamprecht v. FCC*, 958 F.2d 382, 390 (D.C. Cir. 1992); *G & V Lounge v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

When considered alongside the constitutional injuries and harms discussed above, and the questionable evidence supporting the Government's national security motivations, the balance of equities and public interests justify granting the Plaintiffs' TRO. *See Aziz*, 2017 WL 580855, at * 10. Nationwide relief is appropriate in light of the likelihood of success on the Establishment Clause claim.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion for TRO is hereby GRANTED.

TEMPORARY RESTRAINING ORDER

It is hereby ADJUDGED, ORDERED, and DECREED that:

Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

No security bond is required under Federal Rule of Civil Procedure 65(c).

The Court declines to stay this ruling or hold it in abeyance should an emergency appeal of this order be filed.

Pursuant to Federal Rule of Civil Procedure 65(b)(2), the Court intends to set an expedited hearing to determine whether this Temporary Restraining Order should be extended. The parties shall submit a stipulated briefing and hearing schedule for the Court's approval forthwith.

IT IS SO ORDERED.

Dated: Mar. 15, 2017 at Honolulu, Hawai'i.

[SEAL OMITTED]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. NO. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

[Filed: Mar. 29, 2017]

ORDER GRANTING MOTION TO CONVERT TEMPORARY RESTRAINING ORDER TO A PRELIMINARY INJUNCTION

INTRODUCTION

On March 15, 2017, the Court temporarily enjoined Sections 2 and 6 of Executive Order No. 13,780, entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 6, 2017). *See* Order Granting Mot. for TRO, ECF No. 219 [hereinafter TRO]. Plaintiffs State of Hawai'i and Ismail Elshikh, Ph.D., now move to convert the TRO to a preliminary injunction. *See* Pls.' Mot. to Convert TRO to Prelim. Inj., ECF No. 238 [hereinafter Motion].

Upon consideration of the parties' submissions, and following a hearing on March 29, 2017, the Court concludes that, on the record before it, Plaintiffs have met their burden of establishing a strong likelihood of success on the merits of their Establishment Clause claim,

that irreparable injury is likely if the requested relief is not issued, and that the balance of the equities and public interest counsel in favor of granting the requested relief. Accordingly, Plaintiffs' Motion (ECF No. 238) is GRANTED.

BACKGROUND

The Court briefly recounts the factual and procedural background relevant to Plaintiffs' Motion. A fuller recitation of the facts is set forth in the Court's TRO. *See* TRO 3-14, ECF No. 219.

I. The President's Executive Orders

A. Executive Order No. 13,769

On January 27, 2017, the President of the United States issued Executive Order No. 13,769 entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 8977 (Jan. 27, 2017).[1] On March 6, 2017, the President issued another

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[1] On February 3, 2017, the State filed its complaint and an initial motion for TRO, which sought to enjoin Sections 3(c), 5(a)-(c), and 5(e) of Executive Order No. 13,769. Pls.' Mot. for TRO, Feb. 3, 2017, ECF No. 2. The Court stayed the case (*see* ECF Nos. 27 & 32) after the United States District Court for the Western District of Washington entered a nationwide preliminary injunction enjoining the Government from enforcing the same provisions of Executive Order No. 13,769 targeted by the State. *See Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). On February 4, 2017, the Government filed an emergency motion in the United States Court of Appeals for the Ninth Circuit seeking a stay of the *Washington* TRO, pending appeal. That emergency motion was denied on February 9, 2017. *See Washington v. Trump*, 847 F.3d 1151 (9th Cir.) (per curium), *denying reconsideration en banc*, — F.3d —, 2017 WL 992527 (9th Cir. 2017). On March 8, 2017, the Ninth Circuit granted the Government's unop-

Executive Order, No. 13,780, identically entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States" (the "Executive Order"), 82 Fed. Reg. 13209. Like its predecessor, the Executive Order restricts the entry of foreign nationals from specified countries and suspends the United States refugee program for specified periods of time.

B. Executive Order No. 13,780

Section 1 of the Executive Order declares that its purpose is to "protect [United States] citizens from terrorist attacks, including those committed by foreign nationals." By its terms, the Executive Order also represents a response to the Ninth Circuit's per curiam decision in *Washington v. Trump*, 847 F.3d 1151. According to the Government, it "clarifies and narrows the scope of Executive action regarding immigration, extinguishes the need for emergent consideration, and eliminates the potential constitutional concerns identified by the Ninth Circuit." Notice of Filing of Executive Order 4-5, ECF No. 56.

Section 2 suspends from "entry into the United States" for a period of 90 days, certain nationals of six countries referred to in Section 217(a)(12) of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*: Iran, Libya, Somalia, Sudan, Syria, and Yemen. 8 U.S.C. § 1187(a)(12); Exec. Order § 2(c). The suspension of entry applies to nationals of these six countries who (1) are outside the United States on the new Executive Order's effective date of March 16, 2017; (2) do not have a valid visa on that date; and (3) did not

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posed motion to voluntarily dismiss the appeal. *See* Order, Case No. 17-35105 (9th Cir. Mar. 8, 2017), ECF No. 187.

have a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017 (the date of Executive Order No. 13,769). Exec. Order § 3(a). The 90-day suspension does not apply to: (1) lawful permanent residents; (2) any foreign national admitted to or paroled into the United States on or after the Executive Order's effective date (March 16, 2017); (3) any individual who has a document other than a visa, valid on the effective date of the Executive Order or issued anytime thereafter, that permits travel to the United States, such as an advance parole document; (4) any dual national traveling on a passport not issued by one of the six listed countries; (5) any foreign national traveling on a diplomatic-type or other specified visa; and (6) any foreign national who has been granted asylum, any refugee already admitted to the United States, or any individual granted withholding of removal, advance parole, or protection under the Convention Against Torture. *See* Exec. Order § 3(b). Under Section 3(c)'s waiver provision, foreign nationals of the six countries who are subject to the suspension of entry may nonetheless seek entry on a case-by-case basis.

Section 6 of the Executive Order suspends the U.S. Refugee Admissions Program for 120 days. The suspension applies both to travel into the United States and to decisions on applications for refugee status. *See* Exec. Order § 6(a). It excludes refugee applicants who were formally scheduled for transit by the Department of State before the March 16, 2017 effective date. Like the 90-day suspension, the 120-day suspension includes a waiver provision that allows the Secretaries of State and Homeland Security to admit refugee applicants on a case-by-case basis. *See* Exec. Order § 6(c).

Unlike Executive Order No. 13,769, the new Executive Order does not expressly refer to an individual's status as a "religious minority" or refer to any particular religion, and it does not include a Syria-specific ban on refugees.

II. Plaintiffs' Claims

Plaintiffs filed a Second Amended Complaint for Declaratory and Injunctive Relief ("SAC") on March 8, 2017 (ECF No. 64) simultaneous with their Motion for TRO (ECF No. 65). The State asserts that the Executive Order inflicts constitutional and statutory injuries upon its residents, employers, and educational institutions, while Dr. Elshikh alleges injuries on behalf of himself, his family, and members of his Mosque. SAC ¶ 1.

According to Plaintiffs, the Executive Order results in "their having to live in a country and in a State where there is the perception that the Government has established a disfavored religion." SAC ¶ 5. Plaintiffs assert that by singling out nationals from the six predominantly Muslim countries, the Executive Order causes harm by stigmatizing not only immigrants and refugees, but also Muslim citizens of the United States. Plaintiffs point to public statements by the President and his advisors regarding the implementation of a "Muslim ban," which Plaintiffs contend is the tacit and illegitimate motivation underlying the Executive Order. *See* SAC ¶¶ 35-60. Plaintiffs argue that, in light of these and similar statements "where the President himself has repeatedly and publicly espoused an improper motive for his actions, the President's action must be invalidated." Pls.' Mem. in Supp. of Mot. for TRO 2, ECF No. 65-1. Plaintiffs additionally present evidence

that they contend undermines the purported national security rationale for the Executive Order and demonstrates the Administration's pretextual justification for the Executive Order. *E.g.*, SAC ¶ 61 (citing Draft DHS Report, SAC, Ex. 10, ECF No. 64-10).

III. March 15, 2017 TRO

The Court's nationwide TRO (ECF No. 219) temporarily enjoined Sections 2 and 6 of the Executive Order, based on the Court's preliminary finding that Plaintiffs demonstrated a sufficient likelihood of succeeding on their claim that the Executive Order violates the Establishment Clause. *See* TRO 41-42. The Court concluded, based upon the showing of constitutional injury and irreparable harm, the balance of equities, and public interest, that Plaintiffs met their burden in seeking a TRO, and directed the parties to submit a stipulated briefing and preliminary injunction hearing schedule. *See* TRO 42-43.

On March 21, 2017, Plaintiffs filed the instant Motion (ECF No. 238) seeking to convert the TRO to a preliminary injunction prohibiting Defendants from enforcing and implementing Sections 2 and 6 of the Executive Order until the matter is fully decided on the merits. They argue that both of these sections are unlawful in all of their applications and that both provisions are motivated by anti-Muslim animus. Defendants oppose the Motion. *See* Govt. Mem. in Opp'n to Mot. to Convert TRO to Prelim. Inj., ECF No. 251. After full briefing and notice to the parties, the Court held a hearing on the Motion on March 29, 2017.

DISCUSSION

The Court's TRO details why Plaintiffs are entitled to preliminary injunctive relief. *See* TRO 15-43. The Court reaffirms and incorporates those findings and conclusions here, and addresses the parties' additional arguments on Plaintiffs' Motion to Convert.

I. Plaintiffs Have Demonstrated Standing At This Preliminary Phase

The Court previously found that Plaintiffs satisfied Article III standing requirements at this preliminary stage of the litigation. *See* TRO 15-21 (State), 22-25 (Dr. Elshikh). The Court renews that conclusion here.

A. Article III Standing

Article III, Section 2 of the Constitution permits federal courts to consider only "cases" and "controversies." *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)).

"At this very preliminary stage of the litigation, the [Plaintiffs] may rely on the allegations in their Complaint and whatever other evidence they submitted in support of their TRO motion to meet their burden."

Washington, 847 F.3d at 1159 (citing *Lujan*, 504 U.S. at 561). "With these allegations and evidence, the [Plaintiffs] must make a 'clear showing of each element of standing.'" *Id.* (quoting *Townley v. Miller*, 722 F.3d 1128, 1133 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 907 (2014)). On the record presented at this preliminary stage of the proceedings, Plaintiffs meet the threshold Article III standing requirements.

B. The State Has Standing

For the reasons stated in the TRO, the State has standing based upon injuries to its proprietary interests. *See* TRO 16-21.[2]

The State sufficiently identified monetary and intangible injuries to the University of Hawaii. *See, e.g.*, Suppl. Decl. of Risa E. Dickson, Mot. for TRO, Ex. D-1, ECF No. 66-6; Original Dickson Decl., Mot. for TRO, Ex. D-2, ECF No. 66-7. The Court previously found these types of injuries to be nearly indistinguishable from those found sufficient to confer standing according to the Ninth Circuit's *Washington* decision. *See* 847 F.3d at 1161 ("The necessary connection can be drawn in at most two logical steps: (1) the Executive Order prevents nationals of seven countries from enter-

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[2] The Court once again does not reach the State's alternative standing theory based on protecting the interests of its citizens as *parens patriae*. *See Washington*, 847 F.3d at 1168 n.5 ("The States have asserted other proprietary interests and also presented an alternative standing theory based on their ability to advance the interests of their citizens as *parens patriae*. Because we conclude that the States' proprietary interests as operators of their public universities are sufficient to support standing, we need not reach those arguments.").

ing Washington and Minnesota; (2) as a result, some of these people will not enter state universities, some will not join those universities as faculty, some will be prevented from performing research, and some will not be permitted to return if they leave. And we have no difficulty concluding that the States' injuries would be redressed if they could obtain the relief they ask for: a declaration that the Executive Order violates the Constitution and an injunction barring its enforcement."). The State also presented evidence of injury to its tourism industry. *See, e.g.*, SAC ¶ 100; Suppl. Decl. of Luis P. Salaveria, Mot. for TRO, Ex. C-1, ECF No. 66-4; Suppl. Decl. of George Szigeti, ¶¶ 5-8, Mot. for TRO, Ex. B-1, ECF No. 66-2.

For purposes of the instant Motion, the Court concludes that the State has preliminarily demonstrated that: (1) its universities will suffer monetary damages and intangible harms; (2) the State's economy is likely to suffer a loss of revenue due to a decline in tourism; (3) such harms can be sufficiently linked to the Executive Order; and (4) the State would not suffer the harms to its proprietary interests in the absence of implementation of the Executive Order. *See* TRO 21. These preliminary findings apply to each of the challenged Sections of the Executive Order. Accordingly, at this early stage of the litigation, the State has satisfied the requirements of Article III standing.

C. Dr. Elshikh Has Standing

Dr. Elshikh likewise has met his preliminary burden to establish standing to assert an Establishment Clause violation. *See* TRO 22-25. "The standing question, in plain English, is whether adherents to a religion have

standing to challenge an official condemnation by their government of their religious views[.] Their 'personal stake' assures the 'concrete adverseness' required." *See Catholic League for Religious & Civil Rights v. City & Cty. of San Francisco*, 624 F.3d 1043, 1048-49 (9th Cir. 2010) (en banc). Dr. Elshikh attests that the effects of the Executive Order are "devastating to me, my wife and children." Elshikh Decl. ¶ 6, Mot. for TRO, Ex. A, ECF No. 66-1; *see also id.* ¶¶ 1, 3 ("I am deeply saddened . . . . by the message that both [Executive Orders] convey—that a broad travel-ban is 'needed' to prevent people from certain Muslim countries from entering the United States."); SAC ¶ 90 ("Muslims in the Hawai'i Islamic community feel that the new Executive Order targets Muslim citizens because of their religious views and national origin. Dr. Elshikh believes that, as a result of the new Executive Order, he and members of the Mosque will not be able to associate as freely with those of other faiths."). The alleged injuries are sufficiently personal, concrete, particularized, and actual to confer standing in the Establishment Clause context. *E.g.*, SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3. These injuries have already occurred and will continue to occur if the Executive Order is implemented and enforced; the injuries are neither contingent nor speculative.

The final two aspects of Article III standing—causation and redressability—are also satisfied with respect to each of the Executive Order's challenged Sections. Dr. Elshikh's injuries are traceable to the new Executive Order and, if Plaintiffs prevail, a decision enjoining portions of the Executive Order would redress that injury. *See Catholic League*, 624 F.3d at

1053. At this preliminary stage of the litigation, Dr. Elshikh has accordingly carried his burden to establish standing under Article III.

The Court turns to the factors for granting preliminary injunctive relief.

II. Legal Standard: Preliminary Injunctive Relief

The underlying purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974); *see also Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006).

The Court applies the same standard for issuing a preliminary injunction as it did when considering Plaintiffs' Motion for TRO. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citation omitted).

The Court, in its discretion, may convert a temporary restraining order into a preliminary injunction. *See, e.g., ABX Air, Inc. v. Int'l Bhd. of Teamsters*, No. 1:16-CV-1096, 2016 WL 7117388, at *5 (S.D. Ohio Dec. 7, 2016) (granting motion to convert TRO into a preliminary injunction because "Defendants fail to allege any material fact suggesting that, if a hearing were held, this Court would reach a different outcome"; "[n]othing has occurred to alter the analysis in the

Court's original TRO, and since this Court has already complied with the requirements for the issuance of a preliminary injunction, it can simply convert the nature of its existing Order."); *Productive People, LLC v. Ives Design*, No. CV-09-1080-PHX-GMS, 2009 WL 1749751, at *3 (D. Ariz. June 18, 2009) ("Because Defendants have given the Court no reason to alter the conclusions provided in its previous Order [granting a TRO], and because '[t]he standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction,' the Court will enter a preliminary injunction." (quoting *Brown Jordan Int'l, Inc. v. Mind's Eye Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2002))). Here, the parties were afforded notice, a full-briefing on the merits, and a hearing both prior to entry of the original TRO and prior to consideration of the instant Motion.

For the reasons that follow and as set forth more fully in the Court's TRO, Plaintiffs have met their burden here.

III. Analysis of Factors: Likelihood of Success on the Merits

The Court's prior finding that Plaintiffs sufficiently established a likelihood of success on the merits of their Count I claim that the Executive Order violates the Establishment Clause remains undisturbed. *See* TRO 30-40.[3]

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[3] The Court again expresses no view on Plaintiffs' additional statutory or constitutional claims.

A. Establishment Clause

Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971), provides the benchmark for evaluating whether governmental action is consistent with or at odds with the Establishment Clause. According to *Lemon*, government action (1) must have a primary secular purpose, (2) may not have the principal effect of advancing or inhibiting religion, and (3) may not foster excessive entanglement with religion. *Id.* "Failure to satisfy any one of the three prongs of the *Lemon* test is sufficient to invalidate the challenged law or practice." *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1076-77 (9th Cir. 2010).

The Court determined in its TRO that the preliminary evidence demonstrates the Executive Order's failure to satisfy *Lemon*'s first test. *See* TRO 33-36. The Court will not repeat that discussion here. As no *new* evidence contradicting the purpose identified by the Court has been submitted by the parties since the issuance of the March 15, 2017 TRO, there is no reason to disturb the Court's prior determination.

Instead, the Federal Defendants take a different tack. They once more urge the Court not to look beyond the four corners of the Executive Order. According to the Government, the Court must afford the President deference in the national security context and should not "'look behind the exercise of [the President's] discretion' taken 'on the basis of a facially legitimate and bona fide reason.'" Govt. Mem. in Opp'n to Mot. for TRO 42-43 (quoting *Kliendienst v. Mandel*, 408 U.S. 753, 770 (1972)), ECF No. 145. No binding authority, however, has decreed that Establishment Clause juris-

prudence ends at the Executive's door. In fact, *every court* that has considered whether to apply the Establishment Clause to either the Executive Order or its predecessor (regardless of the ultimate outcome) has done so.[4] Significantly, this Court is constrained by the binding precedent and guidance offered in *Washington*. There, citing *Lemon*, the Ninth Circuit clearly indicated that the Executive Order is subject to the very type of secular purpose review conducted by this

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[4] *See Sarsour v. Trump*, No. 1:17-cv-00120 AJT-IDD, 2017 WL 1113305, at *11 (E.D. Va. Mar. 27, 2017) ("[T]he Court rejects the Defendants' position that since President Trump has offered a legitimate, rational, and non-discriminatory purpose stated in EO-2, this Court must confine its analysis of the constitutional validity of EO-2 to the four corners of the Order.") (citations omitted); *Int'l Refugee Assistance Project v. Trump*, No. TDC-17-0361, 2017 WL 1018235, at *16 (D. Md. Mar. 16, 2017) ("Defendants argue that because the Establishment Clause claim implicates Congress's plenary power over immigration as delegated to the President, the Court need only consider whether the Government has offered a 'facially legitimate and bona fide reason' for its action. *Mandel*, 408 U.S. at 777 . . . . [A]lthough '[t]he Executive has broad discretion over the admission and exclusion of aliens,' that discretion 'may not transgress constitutional limitations,' and it is 'the duty of the courts' to 'say where those statutory and constitutional boundaries lie.' *Abourezk[v. Reagan]*, 785 F.2d [1043,] 1061 [(D.C. Cir. 1986)]."); *Aziz v. Trump*, No. 1:17-CV-116 LMB-TCB, 2017 WL 580855, at *8 (E.D. Va. Feb. 13, 2017) ("Moreover, even if Mandel[, 408 U.S. at 770,] did apply, it requires that the proffered executive reason be 'bona fide.' As the Second and Ninth Circuits have persuasively held, if the proffered 'facially legitimate' reason has been given in 'bad faith,' it is not 'bona fide.' *Am. Academy of Religion v. Napolitano*, 573 F.3d 115, 126 (2d Cir. 2009); *Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir. 2008). That leaves the Court in the same position as in an ordinary secular purpose case: determining whether the proffered reason for the EO is the real reason.")).

Court in considering the TRO. *Washington*, 847 F.3d at 1167-68; *id.* at 1162 (stating that *Mandel* does not apply to the "promulgation of sweeping immigration policy" at the "highest levels of the political branches").

The Federal Defendants' arguments, advanced from the very inception of this action, make sense from this perspective—where the "historical context and 'the specific sequence of events leading up to'" the adoption of the challenged Executive Order are as full of religious animus, invective, and obvious pretext as is the record here, it is no wonder that the Government urges the Court to altogether ignore that history and context. *See McCreary Cty. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 862 (2005). The Court, however, declines to do so. *Washington*, 847 F.3d at 1167 ("It is well established that evidence of purpose beyond the face of the challenged law may be considered in evaluating Establishment and Equal Protection Clause claims."). The Court will not crawl into a corner, pull the shutters closed, and pretend it has not seen what it has.[5] The Supreme Court and this Circuit both dictate otherwise, and that is the law this Court is bound to follow.

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[5] *See Int'l Refugee Assistance Project*, 2017 WL 1018235, at *14 ("Defendants have cited no authority concluding that a court assessing purpose under the Establishment Clause may consider only statements made by government employees at the time that they were government employees. Simply because a decisionmaker made the statements during a campaign does not wipe them from the 'reasonable memory' of a 'reasonable observer.'" (quoting *McCreary*, 545 U.S. at 866)).

B. Future Executive Action

The Court's preliminary determination does not foreclose future Executive action. The Court recognizes that it is not the case that the Administration's past conduct must forever taint any effort by it to address the security concerns of the nation. *See* TRO 38-39. Based upon the preliminary record available, however, one cannot conclude that the actions taken during the interval between revoked Executive Order No. 13,769 and the new Executive Order represent "*genuine* changes in constitutionally significant conditions." *McCreary*, 545 U.S. at 874 (emphasis added).

The Government emphasizes that "the Executive Branch revised the new Executive Order to avoid any Establishment Clause concerns," and, in particular, removed the preference for religious minorities provided in Executive Order No. 13,769. Mem. in Opp'n 21, ECF No. 251. These efforts, however, appear to be precisely what Plaintiffs characterize them to be: efforts to "sanitize [Executive Order No. 13,769's] refugee provision in order to 'be responsive to a lot of very technical issues that were brought up by the court.'" Mem. in Supp. of Mot. to Convert TRO to Prelim. Inj. 20, ECF No. 238-1 [hereinafter PI Mem.] (quoting SAC ¶ 74(a)). Plaintiffs also direct the Court to the President's March 15, 2017 description of the Executive Order as "a watered-down version of the first one." PI Mem. 20 (citing Katyal Decl. 7, Ex. A, ECF No. 239-1). "[A]n implausible claim that governmental purpose has changed should not carry the day in a court of law any more than in a head with common sense." *McCreary*, 545 U.S. at 874.

IV. Analysis of Factors: Irreparable Harm

Irreparable harm may be *presumed* with the finding of a violation of the First Amendment. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Because Dr. Elshikh is likely to succeed on the merits of his Establishment Clause claim, the Court finds that the second factor of the *Winter* test is satisfied—that Dr. Elshikh is likely to suffer irreparable, ongoing, and significant injury in the absence of a preliminary injunction. *See* TRO 40 (citing SAC ¶¶ 88-90; Elshikh Decl. ¶¶ 1, 3).

V. Analysis of Factors: Balance of Equities And Public Interest

The final step in determining whether to grant Plaintiffs' Motion is to assess the balance of equities and examine the general public interests that will be affected. The Court acknowledges Defendants' position that the Executive Order is intended "to protect the Nation from terrorist activities by foreign nationals admitted to the United States[.]" Exec. Order, preamble. National security is unquestionably of vital importance to the public interest. The same is true with respect to affording appropriate deference to the President's constitutional and statutory responsibilities to set immigration policy and provide for the national defense. Upon careful consideration of the totality of the circumstances, however, the Court reaffirms its prior finding that the balance of equities and public interest weigh in favor of maintaining the status quo.

As discussed above and in the TRO, Plaintiffs have shown a strong likelihood of succeeding on their claim that the Executive Order violates First Amendment rights under the Constitution. *See* TRO 41-42; *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is *always* in the public interest to prevent the violation of a party's constitutional rights." (emphasis added) (citing *Elrod*, 427 U.S. at 373)).

VI. Scope of Preliminary Injunction: Sections 2 And 6

Having considered the constitutional injuries and harms discussed above, the balance of equities, and public interest, the Court hereby grants Plaintiffs' request to convert the existing TRO into a preliminary injunction. The requested nationwide relief is appropriate in light of the likelihood of success on Plaintiffs' Establishment Clause claim. *See, e.g., Texas v. U.S.*, 809 F.3d 134, 188 (5th Cir. 2015) ("[Because] the Constitution vests [district courts] with 'the judicial Power of the United States' . . . , [i]t is not beyond the power of the court, in appropriate circumstances, to issue a nationwide injunction." (citing U.S. Const. art. III, § 1)), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016); *see also Washington*, 847 F.3d at 1167 ("Moreover, even if limiting the geographic scope of the injunction would be desirable, the Government has not proposed a workable alternative form of the TRO that accounts for the nation's multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States' borders.").

The Government insists that the Court, at minimum, limit any preliminary injunction to Section 2(c) of the Executive Order. It makes little sense to do so. That is because the entirety of the Executive Order runs afoul of the Establishment Clause where "openly available data support[] a commonsense conclusion that a religious objective permeated the government's action," and not merely the promulgation of Section 2(c). *McCreary*, 545 U.S. at 863; *see* SAC ¶¶ 36-38, 58, 107; TRO 16, 24-25, 42. Put another way, the historical context and evidence relied on by the Court, highlighted by the comments of the Executive and his surrogates, does not parse between Section 2 and Section 6, nor does it do so between subsections within Section 2. Accordingly, there is no basis to narrow the Court's ruling in the manner requested by the Federal Defendants.[6] *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 539-40 (1993) ("[It would be]

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[6] Plaintiffs further note that the Executive Order "bans refugees at a time when the publicized refugee crisis is focused on Muslim-majority nations." Reply in Supp. of Mot. to Convert TRO to Prelim. Inj. 14. Indeed, according to Pew Research Center analysis of data from the State Department's Refugee Processing Center, a total of 38,901 Muslim refugees entered the United States in fiscal year 2016, accounting for nearly half of the almost 85,000 refugees who entered the country during that period. *See* Br. of Chicago, Los Angeles, New York, Philadelphia, & Other Major Cities & Counties as Amici Curiae in Supp. of Pls.' Mot. to Convert TRO to Prelim. Inj. 12, ECF No. 271-1 (citing Phillip Connor, *U.S. Admits Record Number of Muslim Refugees in 2016*, Pew Research Center (Oct. 5, 2016), http://www.pewresearch.org/fact-tank/2016/10/05/u-s-admits-record-number-ofmuslim-refugees-in-2016). "That means the U.S. has admitted the highest number of Muslim refugees of any year since date of self-reported religious affiliations first became publicly available in 2002." *Id.*

implausible to suggest that [Section 2(c)] but not the [other Sections] had as [its] object the suppression of [or discrimination against a] religion. . . . We need not decide whether the Ordinance 87-72 could survive constitutional scrutiny if it existed separately; it must be invalidated because it functions, with the rest of the enactments in question, to suppress Santeria religious worship.").

The Court is cognizant of the difficult position in which this ruling might place government employees performing what the Federal Defendants refer to as "inward-facing" tasks of the Executive Order. Any confusion, however, is due in part to the Government's failure to provide a workable framework for narrowing the scope of the enjoined conduct by specifically identifying those portions of the Executive Order that are in conflict with what it merely argues are "internal governmental communications and activities, most if not all of which could take place in the absence of the Executive Order but the status of which is now, at the very least, unclear in view of the current TRO." Mem. in Opp'n 29. The Court simply cannot discern, on the present record, a method for determining which enjoined provisions of the Executive Order are causing the alleged confusion asserted by the Government. *See, e.g.*, Mem. in Opp'n 28 ("[A]n internal review of procedures obviously can take place independently of the 90-day suspension-of-entry provision (though doing so would place additional burdens on the Executive Branch, which is one of the several reasons for the 90-day suspension (citing Exec. Order No. 13,780, § 2(c)). Without more, "even if the [preliminary injunction] might be overbroad in some respects, it is not our role to try, in

effect, to rewrite the Executive Order." *Washington*, 847 F.3d at 1167.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion to Convert Temporary Restraining Order to A Preliminary Injunction is hereby GRANTED.

PRELIMINARY INJUNCTION

It is hereby ADJUDGED, ORDERED, and DECREED that:

Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

No security bond is required under Federal Rule of Civil Procedure 65(c).

The Court declines to stay this ruling or hold it in abeyance should an appeal of this order be filed.

IT IS SO ORDERED.

Dated: Mar. 29, 2017 at Honolulu, Hawai'i.

[SEAL OMITTED]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-15589
D.C. No. 1:17-cv-00050-DKW-KSC

STATE OF HAWAII; ISMAIL ELSHIKH,
PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX W. TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; UNITED STATES OF AMERICA,
DEFENDANTS-APPELLANTS

Argued and Submitted: May 15, 2017
Seattle, Washington
[Filed: June 12, 2017]

OPINION

Appeal from the United States District Court
for the District of Hawai'i
Derrick Kahala Watson, District Judge, Presiding

Before: MICHAEL DALY HAWKINS, RONALD M. GOULD, and RICHARD A. PAEZ, Circuit Judges.

OPINION[1]

PER CURIAM:

We are asked to delineate the statutory and constitutional limits to the President's power to control immigration in this appeal of the district court's order preliminarily enjoining two sections of Executive Order 13780 ("EO2" or "the Order"), "Protecting the Nation From Foreign Terrorist Entry Into the United States." The Immigration and Nationality Act ("INA") gives the President broad powers to control the entry of aliens, and to take actions to protect the American public. But immigration, even for the President, is not a one-person show. The President's authority is subject to certain statutory and constitutional restraints. We conclude that the President, in issuing the Executive Order, exceeded the scope of the authority delegated to him by Congress. In suspending the entry of more than 180 million nationals from six countries, suspending the entry of all refugees, and reducing the cap on the admission of refugees from 110,000 to 50,000 for the 2017 fiscal year, the President did not meet the essential precondition to exercising his delegated authority: The President must make a sufficient finding that the entry of these classes of people would be "detrimental to the interests of the United States." Further, the Order runs afoul of other provisions of the INA that prohibit nationality-based discrimination and require the President to follow a specific process when setting the annual cap on the admission of refugees. On these statutory bases, we affirm in large part the

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[1] We thank the parties and their counsel, as well as the amici, for their excellent briefs and arguments in this case.

district court's order preliminarily enjoining Sections 2 and 6 of the Executive Order.

I

A

One week after inauguration and without interagency review, President Donald J. Trump issued Executive Order 13769 ("EO1"). Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).[2] Entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States," EO1's stated purpose was to "protect the American people from terrorist attacks by foreign nationals admitted to the United States." *Id.* EO1 recited that "[n]umerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program." *Id.*

EO1 mandated two main courses of action to assure that the United States remain "vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism." *Id.* In Section 3, the President invoked his authority under 8 U.S.C. § 1182(f) to suspend for 90 days immigrant and nonimmigrant entry into the United States of nationals from seven majority-Muslim countries: Iraq, Iran, Libya, Sudan, Somalia, Syria, and Yemen. *See id.* at 8978. In Section 5, the President immediately suspended the U.S.

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[2] EO1 was a predecessor to Executive Order 13780, which is the subject of the current appeal.

Refugee Admissions Program ("USRAP") for 120 days, imposed a ban of indefinite duration on the entry of refugees from Syria, and limited the entry of refugees to 50,000 in fiscal year 2017. *Id.* at 8979. EO1 also ordered that changes be made to the refugee screening process "to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality." *Id.* EO1 permitted the Secretaries of State and Homeland Security to make case-by-case exceptions to these restrictions "when in the national interest," and explained that it would be in the national interest "when the person is a religious minority in his country of nationality facing religious persecution." *Id.*

EO1 took immediate effect, causing great uncertainty as to the scope of the order, particularly in its application to lawful permanent residents. Notably, federal officials themselves were unsure as to the scope of EO1, which caused mass confusion at airports and other ports of entry. *See* Brief of the Foundation of Children of Iran and Iranian Alliance Across Borders as Amici Curiae, Dkt. No. 77 at 11-12 (describing how an Iranian visa holder was turned away while en route to the United States because of the confusion regarding the contours of EO1's scope); Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 25 n.53 & 54 (noting confusion at airports because officials were neither consulted nor informed of EO1 in advance).

Shortly after EO1 issued, the States of Washington and Minnesota filed suit in the Western District of Washington to enjoin EO1. On February 3, 2017, the district court granted a temporary restraining order

("TRO"). *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). On February 4, 2017, the Government filed an emergency motion in our court, seeking a stay of the TRO pending appeal.

On February 9, 2017, this court denied the Government's emergency motion for a stay of the injunction. *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (per curiam), *reconsideration en banc denied*, 853 F.3d 933 (9th Cir. 2017). In so doing, the panel rejected the Government's arguments that EO1 was wholly unreviewable. *See id.* at 1161-64. After determining that the states had standing based on the alleged harms to their proprietary interests, *id.* at 1159-61, this court concluded that the states demonstrated a likelihood of success on their procedural due process claim, at least as to lawful permanent residents and nonimmigrant visa holders, *id.* at 1164-66. The panel did not review the states' other claims, including the statutory-based claims. *Id.* at 1164.

Rather than continue with the litigation, the Government filed an unopposed motion to voluntarily dismiss the underlying appeal after the President signed EO2. On March 8, 2017, this court granted that motion, which substantially ended the story of EO1. The curtain opens next to the present controversy regarding EO2.

B

On March 6, 2017, the President issued EO2, also entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States." Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017). The revised

Order was to take effect on March 16, 2017, at which point EO1 would be revoked. *Id.* at 13218. The Order expressly stated that EO1 "did not provide a basis for discriminating for or against members of any particular religion" and was "not motivated by animus toward any religion." *Id.* at 13210.

Section 2—"Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Review Period"—reinstates the 90-day ban on travel for nationals of six of the seven majority-Muslim countries identified in EO1: Iran, Libya, Somalia, Sudan, Syria, and Yemen. *Id.* at 13213. Section 2 also directs the Secretary of Homeland Security, the Secretary of State, and the Director of National Intelligence to "conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public- safety threat." *Id.* at 13212. Section 2(c) states in full:

> To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening and vetting of foreign nationals, to ensure that adequate standards are established to prevent infiltration by foreign terrorists, and in light of the national security concerns referenced in section 1 of this order, I hereby proclaim, pursuant to sections 212(f) and 215(a) of the INA, 8 U.S.C. [§§] 1182(f) and 1185(a), that the

> unrestricted entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen would be detrimental to the interests of the United States. I therefore direct that the entry into the United States of nationals of those six countries be suspended for 90 days from the effective date of this order, subject to the limitations, waivers, and exceptions set forth in sections 3 and 12 of this order.

Id. at 13213.

Regarding the six identified countries, EO2 explains:

> Each of these countries is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones. Any of these circumstances diminishes the foreign government's willingness or ability to share or validate important information about individuals seeking to travel to the United States. Moreover, the significant presence in each of these countries of terrorist organizations, their members, and others exposed to those organizations increases the chance that conditions will be exploited to enable terrorist operatives or sympathizers to travel to the United States. Finally, once foreign nationals from these countries are admitted to the United States, it is often difficult to remove them, because many of these countries typically delay issuing, or refuse to issue, travel documents.

Id. at 13210. Based on the conditions of these six countries, "the risk of erroneously permitting entry of a national of one of these countries who intends to

commit terrorist acts or otherwise harm the national security of the United States is unacceptably high." *Id.* at 13211.

The Order states that it no longer includes Iraq on the list of designated countries because of Iraq's "close cooperative relationship" with the United States and its recent efforts to enhance its travel documentation procedures. *Id.* at 13212. The Order also states that its scope has been narrowed from EO1 in response to "judicial concerns" about the suspension of entry with respect to certain categories of aliens. *Id.* EO2 applies only to individuals outside of the United States who do not have a valid visa as of the issuance of EO1 or EO2. EO2, unlike EO1, expressly exempts lawful permanent residents, dual citizens traveling under a passport issued by a country not on the banned list, asylees, and refugees already admitted to the United States. *See id.* at 13213-14. The Order also provides that consular officers or Customs and Border Protection officials can exercise discretion in authorizing case-by-case waivers to issue visas and grant entry during the suspension period, and offers examples of when waivers "could be appropriate." *See id.* at 13214-15.

Section 6—"Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017"—suspends USRAP for 120 days. *Id.* at 13215. During this period, the heads of certain executive agencies are directed to review the current USRAP application and adjudication processes, and to determine the additional procedures that "should" be required for individuals seeking admission as refugees. *See id.* at 13215-16. Invoking 8 U.S.C. § 1182(f), Section 6(b) reduces the number of

refugees to be admitted from 110,000 to 50,000 in fiscal year 2017. *Id.* at 13216. The Order also removes EO1's preference for refugees facing persecution as a member of a minority religion, and no longer imposes a complete ban on Syrian refugees. Section 6 further provides for discretionary case-by- case waivers. *Id.*

EO2 supplies additional information relevant to national security concerns. The Order includes excerpts from the State Department's 2015 Country Reports on Terrorism, that it asserts demonstrate "why . . . nationals [from the designated countries] continue to present heightened risk to the security of the United States." *Id.* at 13210; *see id.* at 13210-11 (providing a brief description of country conditions for each of the designated countries). The Order states that foreign nationals and refugees have committed acts of terrorism:

> Recent history shows that some of those who have entered the United States through our immigration system have proved to be threats to our national security. Since 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States. They have included not just persons who came here legally on visas but also individuals who first entered the country as refugees. For example, in January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses. And in October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction

> as part of a plot to detonate a bomb at a crowded Christmas-tree-lighting ceremony in Portland, Oregon. The Attorney General has reported to me that more than 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation.

Id. at 13212. EO2 does not discuss any instances of domestic terrorism involving nationals from Iran, Libya, Sudan, Syria, or Yemen.

C

Two versions of a report from the Department of Homeland Security ("DHS") surfaced after EO1 issued. First, a draft report from DHS, prepared about one month after EO1 issued and two weeks prior to EO2's issuance, concluded that citizenship "is unlikely to be a reliable indicator of potential terrorist activity" and that citizens of countries affected by EO1 are "[r]arely [i]mplicated in U.S.-[b]ased [t]errorism." Specifically, the DHS report determined that since the spring of 2011, at least eighty-two individuals were inspired by a foreign terrorist group to carry out or attempt to carry out an attack in the United States. Slightly more than half were U.S. citizens born in the United States, and the remaining persons were from twenty-six different countries—with the most individuals originating from Pakistan, followed by Somalia, Bangladesh, Cuba, Ethiopia, Iraq, and Uzbekistan. *Id.* Of the six countries included in EO2, only Somalia was identified as being among the "top" countries-of- origin for the terrorists analyzed in the report. During the time period covered in the report, three offenders were from

Somalia; one was from Iran, Sudan, and Yemen each; and none was from Syria or Libya. The final version of the report, issued five days prior to EO2, concluded "that most foreign-born, [U.S.]-based violent extremists likely radicalized several years *after* their entry to the United States, [thus] limiting the ability of screening and vetting officials to prevent their entry because of national security concerns" (emphasis added).

The same day EO2 issued, Attorney General Jefferson B. Sessions III and Secretary of Homeland Security John F. Kelly submitted a letter to the President recommending that he "direct[] a temporary pause in entry" from countries that are "unable or unwilling to provide the United States with adequate information about their nationals" or are designated as "state sponsors of terrorism."

D

The State of Hawai'i ("the State") filed a motion for a TRO seeking to enjoin EO1, which the District of Hawai'i did not rule on because of the nationwide TRO entered in the Western District of Washington. After EO2 issued, the State filed an amended complaint challenging EO2 in order "to protect its residents, its employers, its educational institutions, and its sovereignty." Dr. Elshikh, the Imam of the Muslim Association of Hawai'i, joined the State's challenge because the Order "inflicts a grave injury on Muslims in Hawai'i, including Dr. Elshikh, his family, and members of his Mosque." In 2015, Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother—Dr. Elshikh's mother-in-law—a Syrian national living in Syria. Dr. Elshikh fears that his mother- in-law will

not be able to enter the United States if EO2 is implemented. Plaintiffs named as Defendants Donald J. Trump, in his official capacity as President of the United States; the U.S. Department of Homeland Security; John F. Kelly, in his official capacity as Secretary of Homeland Security; the U.S. Department of State; Rex W. Tillerson, in his official capacity as Secretary of State; and the United States of America (collectively referred to as "the Government").

Plaintiffs allege that EO2 suffers similar constitutional and statutory defects as EO1 and claim that the Order violates: the Establishment Clause of the First Amendment; the equal protection guarantees of the Fifth Amendment's Due Process Clause on the basis of religion and/or national origin, nationality, or alienage; the Due Process Clause of the Fifth Amendment based on substantive due process rights; the Due Process Clause of the Fifth Amendment based on procedural due process rights; the Immigration and Nationality Act; the Religious Freedom Restoration Act; and the Administrative Procedure Act. For their INA claim, Plaintiffs specifically contend that EO2 violates the INA by discriminating on the basis of nationality, ignoring and modifying the statutory criteria for determining terrorism-related inadmissibility, and exceeding the President's delegated authority under the INA.[3] Plaintiffs also filed a motion for a TRO along with their amended complaint.

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[3] On appeal, Plaintiffs also contend that EO2 violates the INA because it ignores the codified procedures for setting annual refugee admissions provided in 8 U.S.C. § 1157.

On March 15, 2017, the district court granted the TRO, holding that Plaintiffs had shown a likelihood of success on the merits of their Establishment Clause claim, and entered a nationwide injunction prohibiting enforcement of Sections 2 and 6 of EO2. *See Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1011673 (D. Haw. Mar. 15, 2017) ("*Hawai'i TRO*"). On March 29, 2017, the district court granted Plaintiffs' motion to convert the TRO to a preliminary injunction. *See Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1167383 (D. Haw. Mar. 29, 2017) ("*Hawai'i PI*"). The district court declined to narrow the scope of the injunction, concluding that the entirety of Sections 2 and 6 of the Order ran afoul of the Establishment Clause and that the Government did not provide a workable framework for narrowing the scope of the enjoined conduct. *See id.* at *8. The court entered the following injunction:

> Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of the Executive Order across the Nation. Enforcement of these provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

Id. at *9.

On March 30, 2017, the Government filed a notice of appeal. This court granted the Government's unopposed motion to expedite the case. The Govern-

ment requests that this court vacate the preliminary injunction, or at least narrow the injunction, and also stay the injunction pending appeal.

II

The district court held that Plaintiffs were entitled to preliminary relief because they had made a strong showing of success on the merits of their Establishment Clause claim. Applying the secular purpose test from *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971), and relying on the historical record that contained "significant and unrebutted evidence of religious animus driving the promulgation of the Executive Order," the district court concluded that EO2 was issued with an intent to disfavor people of Islamic faith. *See Hawai'i TRO*, 2017 WL 1011673, at *12-16. In so doing, the district court decided an important and controversial constitutional claim without first expressing its views on Plaintiffs' statutory claims, including their INA-based claim. *See id.* at *11 n.11.

The INA claim was squarely before the district court and briefed and argued before this court. Mindful of the Supreme Court's admonition that "courts should be extremely careful not to issue unnecessary constitutional rulings," "[p]articularly where, as here, a case implicates the fundamental relationship between the Branches," we think it appropriate to turn first to the INA claim. *Am. Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153, 161 (1989) (per curiam); *accord Lying v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) ("A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching

constitutional questions in advance of the necessity of deciding them.").

After first determining that Plaintiffs have standing to assert their INA-based statutory claim, we conclude that Plaintiffs have shown a likelihood of success on the merits of that claim and that the district court's preliminary injunction order can be affirmed in large part based on statutory grounds. For reasons further explained below, we need not, and do not, reach the Establishment Clause claim to resolve this appeal. *See Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) ("[I]f a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.").

III

Before turning to our review of Plaintiffs' statutory claim, we first address the Government's challenge to the preliminary injunction order on justiciability grounds. The Government contends both that Plaintiffs lack standing to pursue this case and that the case is not yet ripe. The Government further contends that the consular nonreviewability doctrine bars this court from reviewing EO2. We address each contention in turn.

A

"Article III of the Constitution limits federal-court jurisdiction to 'Cases' and 'Controversies.'" *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007). "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy" and limits who may

"maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). "At this very preliminary stage of the litigation, [Plaintiffs] may rely on the allegations in their [amended complaint] and whatever other evidence they submitted in support of their [preliminary injunction] motion to meet their burden." *Washington*, 847 F.3d at 1159; *see Lujan*, 504 U.S. at 561.

The district court determined that both the State of Hawai'i and Dr. Elshikh have standing to pursue their Establishment Clause claim. *See Hawai'i TRO*, 2017 WL 1011673, at *7-10. The Government argues that Plaintiffs fail to satisfy the requirements of Article III standing to bring their Establishment Clause claim. Plaintiffs must establish standing for each of their claims. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). As we do not reach Plaintiffs' Establishment Clause claim, we address only whether Plaintiffs have standing to challenge EO2 based on their INA-based statutory claim and conclude that they do.

1

Dr. Elshikh is an American citizen of Egyptian descent. He alleges that EO2 will prevent his mother-in-law from obtaining a visa to reunite with her family. His mother-in-law is a Syrian national currently living in Syria; she last visited her family in Hawai'i in 2005 and has not yet met two of her five grandchildren. Dr. Elshikh's wife filed an I-130 Petition for Alien Relative on behalf of her mother in September 2015, and the petition was approved in February 2016. After EO1 issued, Dr. Elshikh was told that his mother-in-law's visa application for an immigrant visa had been put on hold. After EO1 was enjoined, he was notified that the application had progressed to the next stage of the process, and that her interview would be scheduled at an embassy overseas. Dr. Elshikh understandably and reasonably fears that EO2 will prevent his mother-in-law from entering the country.[4] Dr. Elshikh asserts that he has standing based on the barriers EO2 imposes in preventing him from reuniting his mother-in-law with his family.

This court and the Supreme Court have reviewed the merits of cases brought by U.S. residents with a

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[4] Dr. Elshikh also alleges that EO2 results in a disfavored religion in Hawai'i and the United States; that the Order communicates to his five children that their own country discriminates against individuals who share their ethnicity and religious beliefs; and that the Order has caused members of the Islamic community in Hawai'i, including members of his mosque, to feel that Muslim citizens are targeted because of their religion and national origin. For purposes of determining standing to pursue the INA-based statutory claim, we need not address these aspects of Dr. Elshikh's injury.

specific interest in the entry of a foreigner. *See, e.g.*, *Kerry v. Din*, 135 S. Ct. 2128, 2131 (2015) (involving a challenge by a U.S. citizen to the denial of her husband's visa); *Kleindienst v. Mandel*, 408 U.S. 753, 756-60 (1972) (addressing a challenge by American professors to the denial of a visa to a journalist they had invited to speak at several academic events); *Cardenas v. United States*, 826 F.3d 1164, 1167 (9th Cir. 2016) (determining that a U.S. citizen could challenge the denial of her husband's visa). Most similar to this case, in *Legal Assistance for Vietnamese Asylum Seekers v. Department of State, Bureau of Consular Affairs*, the D.C. Circuit determined that visa sponsors had standing to assert that the State Department's refusal to process visa applications of Vietnamese citizens living in Hong Kong violated 8 U.S.C. § 1152. 45 F.3d 469, 471-73 (D.C. Cir. 1995), *vacated on other grounds*, 519 U.S. 1 (1996). The court explained that the State Department's actions prolonged the separation of immediate family members, which resulted in injury to the sponsors. *Id.*

Dr. Elshikh seeks to reunite his mother-in-law with his family and similarly experiences prolonged separation from her. By suspending the entry of nationals from the six designated countries, including Syria, EO2 operates to delay or prevent the issuance of visas to nationals from those countries, including Dr. Elshikh's mother-in-law. Dr. Elshikh has alleged a concrete harm because EO2, specifically the operation of Section 2, is a barrier to reunification with his mother-in-law in light of her stalled visa process. *See id.* (holding that U.S. resident sponsors had standing to challenge the State Department's refusal to process visa applications); *Int'l Refugee Assistance Project v. Trump*,

— F.3d —, No. 17-1351, 2017 WL 2273306, at *10 (4th Cir. May 25, 2017) (en banc), *as amended* (May 31, 2017) (identifying prolonged separation between plaintiff and his wife as a concrete harm). That his mother-in-law's visa application process was placed on hold when EO1 took effect, but moved forward when EO1 was enjoined, further shows that Dr. Elshikh's injury is concrete, real, and immediate if EO2 takes effect. Dr. Elshikh has thus alleged a sufficient injury-in-fact. While not challenged by the Government, it is also clear that Dr. Elshikh has established causation and redressability. His injuries are fairly traceable to the Order, satisfying causation, and enjoining EO2 will remove a barrier to reunification and redress that injury, satisfying redressability.

Dr. Elshikh has met the requirements for constitutional standing with respect to the INA-based statutory claim.

2

The State of Hawai'i alleges two primary theories of harm in asserting its standing: harm to its proprietary interests and impairment of its sovereign interests.

"[L]ike other associations and private parties, a State is bound to have a variety of proprietary interests. A State may, for example, own land or participate in a business venture." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982). "And like other such proprietors [the State] may at times need to pursue those interests in court." *Id.* at 601-02.

The State asserts that it has standing because of the injuries inflicted on its university. The University of

Hawai'i ("the University"), which the State operates, has twenty-three graduate students, at least twenty-nine visiting faculty members, and other permanent faculty members from the six countries designated in EO2. The State asserts that EO2 constrains the University's ability to recruit and enroll undergraduate and graduate students, and recruit and hire visiting faculty from the affected countries. The State also contends that EO2 threatens the University's ability to fulfill its educational mission by hampering recruitment of diverse students, preventing scholars from considering employment at the University, dissuading current professors and scholars from continuing their scholarship at the University, hindering the free flow of ideas, and harming its values of inclusiveness and tolerance.

Given the timing of the admissions cycle and this litigation, the State concedes that it is too soon to determine the full impact on recruitment, but asserts that individuals who are not current visa holders or lawful permanent residents would be precluded from considering the University. In its opposition brief, the State gave updated information, explaining that eleven graduate students from the countries affected by the Order have been admitted, and the University was still considering applications from twenty-one other affected applicants. After the case was submitted, Plaintiffs supplemented the record with further updates on the University's admissions cycle.[5] At least three graduate students, each from one of the six des-

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[5] The Government did not oppose Plaintiffs' motion for leave to supplement the record, and we granted the motion.

ignated countries, have accepted their offers of admission and have committed to attending the University. There are eleven graduate student applicants, each from one of the six designated countries, with pending offers of admission for the 2017-18 school year. University classes begin on August 21, 2017, but at least two of the students who have accepted their offers of admission must be present on campus by August 1, 2017 and August 10, 2017, respectively, for their graduate programs. The State further explains that if EO2 takes effect now, these students' ability to obtain visas will be impeded.

Before Plaintiffs supplemented the record, the Government argued that the State had not identified any prospective student or faculty member who wished to enter the country *during* Section 2(c)'s 90-day period. However, the State's alleged harm is that EO2 *presently* constrains their recruitment efforts for students and faculty, and that EO2 deters prospective students and faculty members. Given the short admissions cycle—from when the University offers admissions to when international students must decide whether to attend—and the uncertainty of whether EO2 will inhibit their ability to secure a visa before the fall semester begins, EO2's deterrent effect is an injury that is "concrete" and "imminent," as opposed to merely "speculative." *See Lujan*, 504 U.S. at 560-61 (internal quotation marks omitted). Of course, a student who is not permitted to obtain a visa and enter our country would not accept an offer of admission.

The Government next contends that Plaintiffs cannot rely on events that unfolded after the filing of the complaint to establish standing. This argument is not

persuasive. The State had previously contended that its recruitment was constrained by EO2 and its supplemental declaration merely provides greater detail regarding the students who may be unable to join the academic community this fall if EO2 takes effect. We consider the supplemental information as further evidence that EO2 will harm the State because students affected by Section 2(c) may not attend the University, and the University will lose tuition and educational benefits.

The State's standing can thus be grounded in its proprietary interests as an operator of the University. EO2 harms the State's interests because (1) students and faculty suspended from entry are deterred from studying or teaching at the University; and (2) students who are unable to attend the University will not pay tuition or contribute to a diverse student body. *See Washington*, 847 F.3d at 1161 (holding that states, as operators of universities, had Article III standing to challenge EO1 based on harms to their proprietary interests); *Texas v. United States*, 809 F.3d 134, 155-63 (5th Cir. 2015), *as revised* (Nov. 25, 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (holding that the state of Texas had standing to challenge the Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") program based on its alleged injury of subsidizing driver's licenses to DAPA beneficiaries). We further conclude that the State has shown that its injury is fairly traceable to EO2 and that enjoining EO2 would redress its harm.

The State also presents an alternative standing theory: that the Order impairs its sovereign interests in carrying out its refugee policies, among other things.

A state has an interest in its "exercise of sovereign power over individuals and entities within the relevant jurisdiction," which "involves the power to create and enforce a legal code." *Alfred L. Snapp & Son*, 458 U.S. at 601. The State contends that EO2 hinders the exercise of its sovereign power to enforce its laws and policies and this inflicts an injury sufficient to provide the State standing to challenge the Order. The State has laws protecting equal rights, barring discrimination, and fostering diversity. *See, e.g.*, Haw. Const. art. 1, §§ 2, 5; Haw. Rev. Stat. §§ 489-3, 515-3. Specific to refugees, the State created the Office of Community Services ("OCS"), which is directed to "[a]ssist and coordinate the efforts of all public and private agencies providing services which affect the disadvantaged, refugees, and immigrants." Haw. Rev. Stat. § 371K-4. OCS operates multiple programs for refugees.

The State has resettled three refugees this fiscal year, and at least twenty since 2010. EO2 would prevent the State from assisting with refugee resettlement and thus prevent it from effectuating its policies aimed at assisting refugee and immigrant populations. *See id.* The State's requested injunctive relief would permit it to assist in the resettlement of refugees, at least through fiscal year 2017. As the State exercises "sovereign power over individuals and entities within the relevant jurisdiction" in administering OCS, we conclude, at this preliminary stage, that the State has made sufficient allegations to support standing to challenge the refugee-related provisions of EO2. *See Alfred L. Snapp & Son*, 458 U.S. at 601; *see also Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253, 269 (4th Cir. 2011)

(collecting cases where state was found to possess sovereign standing based on state statutes that regulated behavior or provided for the administration of a state program).

Concluding that Dr. Elshikh and the State have satisfied Article III's standing requirements,[6] we turn to whether Plaintiffs are within the "zone of interests" protected by the INA.

3

Because Plaintiffs allege a statutory claim, we must determine whether they meet the requirement of having interests that "fall within the zone of interests protected by the law invoked." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1388 (2014) (internal quotation marks omitted).

We have little trouble determining that Dr. Elshikh is within the zone of interests of the INA to challenge EO2 based on this statutory claim. He asserts that the travel ban prevents his mother-in-law from reuniting with his family. *See Legal Assistance for Vietnamese Asylum Seekers*, 45 F.3d at 471-72 ("The INA authorizes the immigration of family members of United States citizens and permanent resident aliens. In origi-

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[6] The State has asserted other proprietary interests, including the loss of tourism revenue. The State also appears to present a standing theory based on its quasi-sovereign interests, as *parens patriae*, to secure its residents from the harmful effects of discrimination. We do not reach these arguments because we conclude that the State's proprietary interests, as an operator of the University of Hawai'i, and its sovereign interests, in carrying out its refugee programs and policies, are sufficient to confer standing. *See Washington*, 847 F.3d at 1161 n.5.

nally enacting the INA, Congress implemented the underlying intention of our immigration laws regarding the preservation of the family unit. Given the nature and purpose of the statute, the resident appellants fall well within the zone of interest Congress intended to protect." (internal quotation marks, citations, and alterations omitted)).

Likewise, the State's efforts to enroll students and hire faculty members who are nationals from the six designated countries fall within the zone of interests of the INA. The INA makes clear that a nonimmigrant student may be admitted into the United States. *See* 8 U.S.C. § 1101(a)(15)(F) (identifying students qualified to pursue a full course of study); 8 C.F.R. § 214.2(f) (providing the requirements for nonimmigrant students, including those in colleges and universities). The INA also provides that nonimmigrant scholars and teachers may be admitted into the United States. *See, e.g.*, 8 U.S.C. § 1101(a)(15)(J) (identifying students, scholars, trainees, teachers, professors, research assistants, specialists, or leaders in fields of specialized knowledge or skill); *id.* § 1101(a)(15)(H) (identifying aliens coming to perform services in a specialty occupation); *id.* § 1101(a)(15)(O) (identifying aliens with extraordinary abilities in the sciences, arts, education, business, or athletics). International students and visiting faculty may qualify for F-1 visas, J-1 27 visas, H-1B visas, or O-1 visas. *See* Directory of Visa Categories, U.S. Dep't of State, https://travel.state.gov/content/visas/en/general/all-visa-categories.html (last visited June 6, 2017). The INA leaves no doubt that the State's interests in student- and employment-based

visa petitions for its students and faculty are related to the basic purposes of the INA.

The State's interest in effectuating its refugee resettlement policies and programs also falls within the zone of interests protected by the INA. *See* 8 U.S.C. § 1101(a)(42) (defining "refugees"); *id.* § 1157 (providing the procedure for determining the number of refugee admissions). These provisions of the INA were amended to provide a "systematic procedure" for the admission of refugees into the United States, as well as "uniform provisions for the effective resettlement and absorption of those refugees who are admitted." Refugee Act of 1980, Pub. L. No. 96-212, § 101, 94 Stat. 102 (1980). The State argues that EO2 upsets this finely-tuned system devised by Congress.

We conclude that Plaintiffs' claims of injury as a result of the alleged statutory violations are, at the least, "*arguably* within the zone of interests" that the INA protects.[7] *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296, 1303 (2017) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)).

Plaintiffs have standing to assert their INA-based statutory claim that EO2 exceeds the scope of the President's authority under the INA and conflicts with various INA provisions.

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[7] The Government also argues that third party prudential standing limitations counsel against this court deciding Plaintiffs' Establishment Clause claim. To the extent this argument applies to Plaintiffs' INA-based statutory claim, we reject it because Plaintiffs have shown that they have suffered injuries as a result of EO2.

B

The Government next argues that Plaintiffs' claims are speculative and not ripe. "Ripeness is peculiarly a question of timing, designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1122 (9th Cir. 2009) (internal quotations marks and alteration omitted). "Our role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000).

We are unpersuaded by the Government's arguments that *until* a student or faculty member requests a waiver and it is denied, or *until* Dr. Elshikh's mother-in-law requests a waiver and she is denied,[8] Plaintiffs injuries are not ripe because they assume "contingent future events that may not occur." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation marks omitted)).

Although the waiver may, in theory, provide students, visiting faculty members, or Dr. Elshikh's mother-in-law an opportunity to obtain visas, the waiver is

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[8] The Government needlessly argues that travel conditions in Syria make it speculative that Dr. Elshikh's mother-in-law would have made her application interview scheduled for May 24, 2017. This argument does not diminish Dr. Elshikh's argument that the Order's suspension of entry of nationals from the six designated countries creates a significant obstacle to reuniting his mother-in-law with him and his family.

discretionary. Indeed, no one can count on it. The Order poses hardships to nationals from the six designated countries by barring throughout the suspension period their ability to obtain visas. The waiver provision neither guarantees that waivers will be granted nor provides a process for applying for a waiver; moreover, the ultimate decision is clearly committed to a consular officer's discretion. *See* 82 Fed. Reg. at 13214 ("Case-by-case waivers *could be appropriate* in circumstances such as the following . . . .") (emphasis added); *id.* at 13219 (stating that nothing in the Order provides any "enforceable" rights). The discretionary waiver is not "a sufficient safety valve," *Washington*, 847 F.3d at 1169, and is a far cry from the "contingent future" argued by the Government. Here, nationals from the six designated countries, including Dr. Elshikh's mother-in-law and students who have accepted, or been offered, admission to the University of Hawai'i, are burdened by EO2 because they are not permitted entry, and whether they might obtain a waiver is speculative and at the discretion of a consular officer or a Customs and Border Protection official. *See* 82 Fed. Reg. at 13214.

We decline the Government's invitation to wait until Plaintiffs identify a visa applicant who was denied a discretionary waiver to assess whether Plaintiffs have shown a likelihood of success on the merits of their claims. Regardless of whether Dr. Elshikh's mother-in-law or the University's prospective students and faculty members might conceivably obtain such a waiver, they will face substantial hardship if we were to first require that they try to obtain a waiver before we will consider their case. *Cf. Abbott Labs. v. Gardner*,

387 U.S. 136, 149 (1967). We conclude that the claim is ripe for review.

C

Finally, the Government renews the argument it made before this court in *Washington v. Trump* that we may not review EO2 because the consular nonreviewability doctrine counsels that the decision to issue or withhold a visa is not subject to judicial review. *See Li Hing of Hong Kong, Inc. v. Levin*, 800 F.2d 970, 971 (9th Cir. 1986) ("[I]t has been consistently held that the consular official's decision to issue or withhold a visa is not subject either to administrative or judicial review."). We reject this argument.

Plaintiffs do not seek review of an individual consular officer's decision to grant or to deny a visa pursuant to valid regulations, which could implicate the consular nonreviewability doctrine. Plaintiffs instead challenge "the President's *promulgation* of sweeping immigration policy." *Washington*, 847 F.3d at 1162. Courts can and do review both constitutional and statutory "challenges to the substance and implementation of immigration policy." *Id.* at 1163; *see, e.g.*, *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 187-88 (1993) (addressing the merits of a challenge that an executive order violated the INA and the United Nations Convention Relating to the Status of Refugees); *INS v. Chadha*, 462 U.S. 919, 940-41 (1983) (addressing whether a section of the INA that authorized one House of Congress to invalidate a decision of the Executive to allow a deportable alien to remain in the United States was unconstitutional).

This case is justiciable because Plaintiffs seek judicial review of EO2, contending that EO2 exceeds the statutory authority delegated by Congress and constitutional boundaries. "This is a familiar judicial exercise." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012). We reject the Government's argument that the Order is not subject to judicial review. Although "[t]he Executive has broad discretion over the admission and exclusion of aliens, [] that discretion is not boundless. It extends only as far as the statutory authority conferred by Congress and may not transgress constitutional limitations. It is the duty of the courts, in cases properly before them, to say where those statutory and constitutional boundaries lie." *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987).

Whatever deference we accord to the President's immigration and national security policy judgments does not preclude us from reviewing the policy at all. *See Rostker v. Goldberg*, 453 U.S. 57, 70 (1981) ("[D]eference does not mean abdication."); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010) ("Our precedents, old and new, make clear that concerns of national security and foreign relations do not warrant abdication of the judicial role.").

We do not abdicate the judicial role, and we affirm our obligation "to say what the law is" in this case. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). We turn to the merits of the appeal of the preliminary injunction order.

IV

A

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Id.* at 20. We may affirm the district court's entry of the preliminary injunction "on any ground supported by the record." *Enyart v. Nat'l Conference of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1159 (9th Cir. 2011).

B

We consider whether Plaintiffs are entitled to preliminary relief based on the likelihood that EO2 violates the INA.[9] First, we address whether the Presi-

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[9] This claim looks at whether the President appropriately exercised his authority under § 1182(f) by satisfying its precondition, and whether, and to what extent, his authority under § 1182(f) is cabined by other provisions of the INA. Because this challenge does not look at whether "the Executive exercises this [delegated and conditional exercise of] power *negatively*," *Mandel*, 408 U.S. at 770 (emphasis added), nor involves a constitutional challenge by a citizen to a visa denial on the basis of congressionally enumerated standards, *id.* at 769-70, but rather looks at whether the President exceeded the scope of his delegated authority, we do not apply *Mandel*'s "facially legitimate and bona fide reason," *id.*, standard. *See Sale*, 509 U.S. at 166-77 (reviewing whether the executive order complied with the INA without reference to *Mandel*'s standard).

dent complied with the conditions set forth in § 1182(f), which are necessary for invoking his authority. We next address the conflicts between EO2 and other provisions of the INA.

1

Under Article I of the Constitution, the power to make immigration laws "is entrusted exclusively to Congress." *Galvan v. Press*, 347 U.S. 522, 531 (1954); *see* U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . [t]o establish an uniform Rule of Naturalization . . . ."); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) ("[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." (internal quotation marks omitted)); *id.* at 796 ("The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification . . . have been recognized as matters solely for the responsibility of the Congress . . . ." (internal quotation marks omitted)).

In the INA of 1952, Congress delegated some of its power to the President through Section 212(f), which provides:

> Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or non-immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

8 U.S.C. § 1182(f).

In Section 2(c) of the Order, the President invokes this power along with § 1185(a)[10] to suspend for 90 days the entry of nationals from the six designated countries. *See* 82 Fed. Reg. at 13213. In Section 6(a) of the Order, the President invokes neither section to suspend travel of refugees and to suspend decisions on applications for refugee status for 120 days, but, in Section 6(b), the President invokes § 1182(f) to cap refugee admissions at 50,000 for the 2017 fiscal year. *Id.* at 13215-16.

The parties dispute whether EO2 falls clearly within the President's congressionally delegated authority. To be sure, § 1182(f) gives the President broad authority to suspend the entry of aliens or classes of aliens. However, this authority is not unlimited. *Cf. Kent v. Dulles*, 357 U.S. 116, 129 (1958) ("[I]f that power is delegated, the standards must be adequate to pass scrutiny by the accepted tests."); *J.W. Hampton, Jr.*,

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[10] Section 1185(a)(1) states:

> Unless otherwise ordered by the President, it shall be unlawful —(1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe[.]

8 U.S.C. § 1185(a)(1). The Government does not argue that § 1185(a)(1) provides an independent basis for the suspension of entry. Because, here, this section does not grant the President a meaningfully different authority than § 1182(f), and 35 because § 1182(f) specifically provides for the President's authority to suspend entry, our analysis proceeds under § 1182(f), understanding that the "reasonable rules, regulations, and orders" the President prescribes would need to, at a minimum, align with the President's authority under § 1182(f).

& Co. v. United States, 276 U.S. 394, 409 (1928) ("[L]egislative action is not a forbidden delegation of legislative power" if Congress provides an "intelligible principle to which the person or body authorized . . . is directed to conform."). Section 1182(f) requires that the President *find* that the entry of a class of aliens into the United States *would be detrimental* to the interests of the United States.[11] This section requires that the President's findings support the conclusion that entry of all nationals from the six designated countries, all refugees, and refugees in excess of 50,000 would be harmful to the national interest. There is no sufficient finding in EO2 that the entry of the excluded classes would be detrimental to the interests of the United States.

i

Section 2(c) declares that "the unrestricted entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen would be detrimental to the interests of the United States" and directs that the entry of nationals from those designated countries be barred for 90 days. 82 Fed. Reg. at 13213. The provision bans more than 180 million people from entry based on their national origin, including nationals who may have never been physically present in those coun-

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[11] We construe the term "detrimental" to have its common-sense, dictionary definition. Detrimental is defined as "causing loss or damage; harmful, injurious, hurtful." *Detrimental*, Oxford English Dictionary, http://www.oed.com/view/Entry/51332?redirectedFrom=detrimental#eid. Throughout the opinion, in addition to the term "detrimental," we also use its synonyms "harmful" and "injurious."

tries. *See* Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 17. Section 2(c) states:

> [1] To temporarily reduce investigative burdens on relevant agencies during the review period [of the United States' vetting procedures], [2] to ensure the proper review and maximum utilization of available resources for the screening and vetting of foreign nationals, [3] to ensure that adequate standards are established to prevent infiltration by foreign terrorists, and [4] in light of the national security concerns referenced in section 1 of this order, I hereby proclaim, pursuant to sections 212(f) and 215(a) of the INA, 8 U.S.C. [§§] 1182(f) and 1185(a), that the unrestricted entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen would be detrimental to the interests of the United States. I therefore direct that the entry into the United States of nationals of those six countries be suspended.

82 Fed. Reg. at 13213. The Government explains that the Order's objective "is to address the risk that potential terrorists might exploit possible weaknesses in the Nation's screening and vetting procedures while the review of those procedures is underway."

We reject the first three reasons provided in Section 2(c) because they relate to preservation of government resources to review existing procedures and ensure adequate vetting procedures. There is no finding that present vetting standards are inadequate, and no finding that absent the improved vetting procedures there likely will be harm to our national interests. These identified reasons do not support the conclusion that

the entry of nationals from the six designated countries would be harmful to our national interests.

We turn to the fourth reason—national security concerns—and examine whether it confers a legally sufficient basis for the President's conclusion that the nationality-based entry restriction is warranted. Section 1(d) of the Order explains that nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen warrant additional scrutiny because:

> Each of these *countries* is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones. Any of these circumstances diminishes the foreign government's willingness or ability to share or validate important information about individuals seeking to travel to the United States. Moreover, the significant presence in each of these *countries* of terrorist organizations, their members, and others exposed to those organizations increases the chance that conditions will be exploited to enable terrorist operatives or sympathizers to travel to the United States. Finally, once foreign nationals from these countries are admitted to the United States, it is often difficult to remove them, because many of these *countries* typically delay issuing, or refuse to issue, travel documents.

Id. at 13210 (emphasis added).

Because of these country conditions, the Order concludes that "the risk of erroneously permitting entry of a national of one of these countries who intends to commit terrorist acts or otherwise harm the national security of the United States is unacceptably high."

Id. at 13211. The Order further indicates that "hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States[,]" but does not identify the number of nationals from the six designated countries who have been so convicted.[12] *See id.* at 13212.

The Order makes no finding that nationality alone renders entry of this broad class of individuals a heightened security risk to the United States. *See Int'l Refugee Assistance Project*, 2017 WL 2273306, at *31 (Keenan, J., concurring in part and concurring in the judgment) ("[T]he Second Executive Order does not state that any *nationals* of the six identified countries, *by virtue of their nationality*, intend to commit terrorist acts in the United States or otherwise pose a detriment to the interests of the United States.").

The Order does not tie these nationals in any way to terrorist organizations within the six designated countries. It does not identify these nationals as contributors to active conflict or as those responsible for insecure country conditions. It does not provide any

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[12] Amicus Cato Institute explains that over the past decade and a half, only twenty-six nationals from the six designated countries have been convicted for any kind of terrorism offense, and that only four nationals from the six designated countries have been convicted of attempting or plotting a terrorist attack in the United States in that time frame. Brief of the Cato Institute as Amicus Curiae, Dkt. No. 170 at 11-12. Since the September 11, 2001 attacks, twelve people have succeeded in carrying out fatal domestic terrorist attacks—none committed by nationals from the six designated countries in EO2. *See* Brief of Foundation of Children of Iran and Iranian Alliance Across Borders as Amici Curiae, Dkt. No. 77 at 23.

link between an individual's nationality and their propensity to commit terrorism or their inherent dangerousness.[13] In short, the Order does not provide a

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[13] Former Presidents have invoked § 1182(f) under non-exigent circumstances to address compromised security conditions abroad but have tied exclusions to the culpable conduct of barred aliens, such as aliens who contributed to a country's situation in a specified way or were members of particular narrowly defined and/or dangerous groups. *See* Kate M. Manuel, *Executive Authority to Exclude Aliens: In Brief* 6-10, Congressional Research Service (2017) (listing categories of aliens excluded under 8 U.S.C. § 1182(f)); *see also* 9 *Foreign Affairs Manual* § 302.14-3(B)(1)(b) (2016), https://fam.state.gov/FAM/09FAM/09FAM030214.html (stating that executive orders issued under § 1182(f) have typically applied to "individuals"; have sometimes been "based on affiliation"; and otherwise have suspended entry "based on objectionable conduct"); Brief of Former Federal Immigration and Homeland Security Officials as Amici Curiae, Dkt. No. 176 at 18-19 ("None of the Executive actions cited elsewhere by the Government, nor any others known to amici, invoked § 1182(f) to suspend entry from one or more countries based on the assumption that nationals from those countries were inherently dangerous." (footnotes omitted)). President Obama's Executive Order 13726, for example, suspended the entry into the United States of persons who were responsible or complicit in particular actions or policies that threaten the stability of Libya. *See* 81 Fed. Reg. 23559 (Apr. 19, 2016).

In two instances, former Presidents have distinguished classes of aliens on the basis of nationality. But these distinctions were made not because of a particular concern that entry of the individuals themselves would be detrimental, but rather, as retaliatory diplomatic measures responsive to government conduct directed at the United States. For example, President Carter's proclamation barring the future entry of Iranians occurred during the exigent circumstance of the Iranian hostage crisis. This was one of many sanctions imposed to increase political pressure on the Iranian government to ensure the safe return of American hostages. *See* Exec. Order 12172, 44 Fed. Reg. 67947 (Nov. 26, 1979), *amended by*

rationale explaining why permitting entry of nationals from the six designated countries under current protocols would be detrimental to the interests of the United States.[14]

The Order's discussion of country conditions fails to bridge the gap. Indeed, its use of nationality as the sole basis for suspending entry means that nationals

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Exec. Order 12206, 45 Fed. Reg. 24101 (Apr. 7, 1980); President Jimmy Carter, *Sanctions Against Iran Remarks Announcing U.S. Actions*, The American Presidency Project (Apr. 7, 1980), http://www.presidency.ucsb.edu/ws/?pid=33233%20. President Reagan's suspension of entry of certain Cuban nationals as immigrants came as a response to the Cuban government's own suspension of "all types of procedures regarding the execution" of an immigration agreement between the United States and Cuba, which had "disrupt[ed] normal migration procedures between the two countries." *See* Proclamation No. 5517, 51 Fed. Reg. 30470 (Aug. 22, 1986).

[14] Indeed, the President recently confirmed his assessment that it is the "countries" that are inherently dangerous, rather than the 180 million individual nationals of those countries who are barred from entry under the President's "travel ban." *See* Donald J. Trump (@realDonaldTrump), Twitter (June 5, 2017, 6:20 PM), https://twitter.com/realDonaldTrump/status/871899511 525961728 ("That's right, we need a TRAVEL BAN for certain DANGEROUS countries, not some politically correct term that won't help us protect our people!") (emphasis in original); *see also* Elizabeth Landers, White House: Trump's tweets are "official statements", CNN (June 6, 2017, 4:37 PM), http://www.cnn.com/2017/06/06/politics/trump-tweets-official-statements/ (reporting the White House Press Secretary's confirmation that the President's tweets are "considered official statements by the President of the United States"). We take judicial notice of President Trump's statement as the veracity of this statement "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).

without significant ties to the six designated countries, such as those who left as children or those whose nationality is based on parentage alone, should be suspended from entry. Yet, nationals of other countries who do have meaningful ties to the six designated countries—and may be contributing to the very country conditions discussed—fall outside the scope of Section 2(c). Consequently, EO2's focus on nationality "could have the paradoxical effect of barring entry by a Syrian national who has lived in Switzerland for decades, but not a Swiss national who has immigrated to Syria during its civil war." *Hawai'i TRO*, 2017 WL 1011673, at *15 (internal quotation marks and alterations omitted); *see also* Brief of the Cato Institute as Amicus Curiae, Dkt. No. 170 at 14-15 (providing statistics on nationals of the designated countries living in other countries as migrants, refugees, or asylum seekers and explaining that Syrian and Iranian nationals do not gain nationality by virtue of their place of birth).

Although the Order explains that country conditions in the six designated countries lessen their governments' ability to share information about nationals seeking to travel to our country, the Order specifically avoids making any finding that the current screening processes are inadequate. As the law stands, a visa applicant bears the burden of showing that the applicant is eligible to receive a visa or other document for entry and is not inadmissible. *See* 8 U.S.C. § 1361. The Government already can exclude individuals who do not meet that burden. *See id.* The Order offers no further reason explaining how this individualized adjudication process is flawed such that permitting entry of

an entire class of nationals is injurious to the interests of the United States.

Finally, the Order relies on 8 U.S.C. § 1187(a)(12) to explain why the six countries have been designated. 82 Fed. Reg. at 13210. In § 1187(a)(12), Congress prevented use of the Visa Waiver Program by dual nationals of, or those who have visited in the last six years, (1) Iraq and Syria, (2) any country designated by the Secretary of State as a state sponsor of terrorism, and (3) any other country designated as a country of concern by the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence. Rather than setting an outright ban on entry of nationals from these countries, Congress restricted access to the tourist Visa Waiver Program and instead required that persons who are nationals of or have recently traveled to these countries enter the United States with a visa. This provision reflects Congress's considered view on similar security concerns that the Order seeks to address. *See Chadha*, 462 U.S. at 951, 959 (explaining that our founders "consciously" chose to place the legislative process in the hands of a "deliberate and deliberative" body). The Order identifies no new information to justify Section 2(c)'s blanket ban as contrasted with § 1187(a)(12)'s restriction from the Visa Waiver Program. Moreover, relying on § 1187(a)(12) alone, which requires that aliens from these countries undergo vetting through visa procedures, does not explain why their *entry* would be detrimental to the interests of the United States. To the contrary, it effectively negates the Order's statement of detriment—that the "*unrestricted* entry into the United States of nationals [of the six designated

countries] would be detrimental to the interests of the United States." 82 Fed. Reg. at 13213 (emphasis added). Section 1187(a)(12) dictates that the entry of individuals covered by the Order is never "unrestricted."

In conclusion, the Order does not offer a sufficient justification to suspend the entry of more than 180 million people on the basis of nationality. National security is not a "talismanic incantation" that, once invoked, can support any and all exercise of executive power under § 1182(f). *United States v. Robel*, 389 U.S. 258, 263-64 (1967); *see also Korematsu v. United States*, 323 U.S. 214, 235 (1944) (Murphy, J., dissenting) ("[T]he exclusion order necessarily must rely for its reasonableness upon the assumption that all persons of Japanese ancestry may have a dangerous tendency to commit sabotage and espionage and to aid our Japanese enemy in other ways. It is difficult to believe that reason, logic or experience could be marshalled in support of such an assumption."). Section 1182(f) requires that the President exercise his authority only after meeting the precondition of finding that entry of an alien or class of aliens *would be* detrimental to the interests of the United States. Here, the President has not done so.

ii

Section 6(a) suspends travel of refugees into the United States under USRAP and suspends decisions on applications for refugee status for 120 days but does not specifically announce that the entry of refugees would be detrimental to the interests of the United States. 82 Fed. Reg. at 13215.

Assuming the President also relied on § 1182(f) to suspend USRAP for 120 days, EO2 provides the following information to possibly support the conclusion that refugee admissions would injure the national interest. First, EO2 explains that the screening and vetting procedures associated with USRAP "play a crucial role in detecting foreign nationals who may commit, aid, or support acts of terrorism and in preventing those individuals from entering the United States," and that it is the policy of the United States to improve screening and vetting procedures associated with USRAP. *Id.* at 13209. Section 1(h) cites two examples of refugees who have been convicted of terrorism-related crimes in the United States:

> [1] [I]n January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses.[15] [2] [I]n October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was

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[15] These two Iraqi nationals pleaded guilty to federal terrorism charges for engaging in terrorism against Americans overseas and providing material support to foreign terrorists and did not face charges for planning a domestic terrorist attack. *See* Press Release: Former Iraqi Terrorists Living in Kentucky Sentenced for Terrorist Activities, U.S. Dep't of Justice, https://www.justice.gov/opa/pr/former-iraqi-terrorists-living-kentucky-sentenced-terrorist-activities (Jan. 29, 2013) (last visited June 6, 2017).

> sentenced to 30 years in prison for attempting to use a weapon of mass destruction . . . .[16]

82 Fed. Reg. at 13212. Section 1(h) also explains that there are "more than 300 persons who entered the United States as refugees [who] are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation." *Id.*

EO2 does not reveal any threat or harm to warrant suspension of USRAP for 120 days and does not support the conclusion that the entry of refugees in the interim time period would be harmful. Nor does it provide any indication that present vetting and screening procedures are inadequate.[17] Instead, EO2 justifies the 120-day suspension as a review period of USRAP application and adjudication processes. 82 Fed. Reg. at 13215. The Government reiterates that the Presi-

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[16] This Somali national entered the United States at the age of three in approximately 1994; the conduct underlying his conviction occurred in 2010 when he was nineteen years old. *See United States v. Mohamud*, 843 F.3d 420, 423 (9th Cir. 2016). His background is consistent with DHS's report that most foreign-born, U.S.-based violent extremists are "likely radicalized several years *after* their entry to the United States," thus "limiting the ability of screening and vetting officials to prevent their entry because of national security concerns" (emphasis added).

[17] Refugees receive the most thorough vetting of all travelers to the United States in a process that takes eighteen to twenty-four months. By the time refugees are approved for resettlement in the United States, they have been reviewed by the United Nations High Commissioner for Refugees, the National Counterterrorism Center, the Federal Bureau of Investigation, the Department of Homeland Security, the Department of Defense, the Department of State, and the U.S. intelligence community. *See* Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 14-16.

dent directed the suspension "in order to allow the Secretary of State to review application and adjudication processes." These explanations do not support a finding that the travel and admission of refugees would be detrimental to the interests of the United States.

iii

Section 6(b) of EO2 restricts entry of refugees to no more than 50,000 in the 2017 fiscal year because entry in excess of 50,000 "would be detrimental to the interests of the United States." 82 Fed. Reg. at 13216. But in accordance with 8 U.S.C. § 1157, President Obama previously determined that the admission of 110,000 refugees to the United States during fiscal year 2017 was justified by humanitarian concerns or otherwise in the national interest. *See* Presidential Determination on Refugee Admissions for Fiscal Year 2017, Presidential Determination No. 2016-13, 81 Fed. Reg. 70315 (Sept. 28, 2016); *see also* Proposed Refugee Admissions for Fiscal Year 2017: Report to the Congress, https://www.state.gov/documents/organization/262168.pdf.[18]

To the extent that 60,000 additional refugees can be considered a class of aliens, EO2 makes *no* findings to justify barring entry in excess of 50,000 as detrimental to the interests of the United States. EO2 gives no explanation for why the 50,001st to the 110,000th refugee would be harmful to the national interest, nor does

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[18] As of May 31, 2017, the United States has admitted 46,403 refugees in the 2017 fiscal year. U.S. Dep't of State, Bureau of Population, Refugees, and Migration, Refugee Admissions Report (2017), http://www.wrapsnet.org/admissions-and-arrivals (last visited June 6, 2017).

it specify any further threat to national security. And there is not any rationale explaining why the previous target admission of 110,000 refugees this fiscal year was justified by humanitarian concerns or otherwise in the national interest, *see* 8 U.S.C. § 1157(a)(2), but that the entry of more than 50,000 refugees this same fiscal year would be detrimental to the national interest. Here too, the President did not meet the statutory precondition of exercising his authority under § 1182(f) to cap refugee admissions.

The actions taken in Sections 2 and 6 require the President first to make sufficient findings that the entry of nationals from the six designated countries and the entry of all refugees would be detrimental to the interests of the United States. We conclude that the President did not satisfy this precondition before exercising his delegated authority. Plaintiffs have shown a likelihood of success on the merits of their claim that the President exceeded his authority under §§ 1182(f) and 1185(a).

2

Plaintiffs contend that Section 2(c) of the Order violates the INA because it discriminates on the basis of nationality, thus violating the non-discrimination mandate of § 1152(a)(1)(A) of the INA. They argue that although the President is given broad authority under § 1182(f), this authority is restrained by § 1152(a)(1)(A).

Contemporaneous to enacting the Civil Rights Act of 1964 and the Voting Rights Act of 1965, Congress passed the INA of 1965 to eliminate the "national origins system as the basis for the selection of immigrants to the United States." H.R. Rep. No. 89-745, at 8 (1965).

Section 1152(a)(1)(A) was enacted as part of that act, and provides:

> [N]o person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, *nationality*, place of birth, or place of residence.

8 U.S.C. § 1152(a)(1)(A) (emphasis added). Section 1152(a)(1)(A) contains specific exemptions, and § 1182(f) is not among them.

The Government tries to reconcile the Order's Section 2(c) with § 1152(a)(1)(A) by arguing that Section 2(c) bars *entry* of nationals from the six designated countries but does not deny the *issuance of immigrant visas* based on nationality. EO2's suspension of entry on the basis of nationality, however, in substance operates as a ban on visa issuance on the basis of nationality. The Order's text confirms as much. Its primary purpose is to evaluate screening and vetting procedures associated with the visa issuance process. 82 Fed. Reg. at 13209. EO2 affects nationals of the six designated countries who were outside of the United States on the effective date of the Order but did not have a valid visa at specific times, such as the effective date of EO1. 82 Fed. Reg. at 13213. Further, it provides for a waiver so consular officers or Customs and Border Protection officials may authorize the issuance of visas during the suspension period. *Id.* at 13214. The Government also stresses that it should not be required to issue visas for aliens who are validly barred from entry, explaining that "[r]equiring that such aliens be issued visas permitting them to travel to this country, only to be denied entry upon arrival, would create needless

difficulties and confusion." Indeed, the Government clarified at oral argument that as a practical matter, the entry ban would be implemented through visa denials. Moreover, the statute makes clear that aliens deemed inadmissible under § 1182, including under § 1182(f) "are ineligible to receive visas," thus confirming the substantial overlap between a denial of entry under § 1182(f) and a visa denial. *See* 8 U.S.C. § 1182(a); *see also Int'l Refugee Assistance Project*, 2017 WL 2273306, at *52 (Thacker, J., concurring) (explaining that the Government's "own arguments and the text and operation of [EO2] belie [the] notion" that the visa issuance process is a different activity than suspension of entry).

We cannot blind ourselves to the fact that, for nationals of the six designated countries, EO2 is effectively a ban on the issuance of immigrant visas. If allowed to stand, EO2 would bar issuance of visas based on nationality in violation of § 1152(a)(1)(A). The Government did not dispute this point at oral argument, and it stands to reason that the whole system of the visa issuance would grind to a halt for nationals of the six designated countries whose entry is barred from the United States. Issuance of visas will automatically stop for those who are banned based on nationality. Yet Congress could not have used "more explicit language" in "unambiguously direct[ing] that no nationality-based discrimination shall occur." *Legal Assistance for Vietnamese Asylum Seekers*, 45 F.3d at 473.

The Government additionally argues that § 1152(a)(1)(A) does not displace the President's preexisting authority under § 1182(f), because the Presi-

dent may validly bar *entry* and the non-discrimination mandate applies strictly to the *issuance of visas*. Based on the plain statutory text, the Government contends that the non-discrimination mandate of § 1152(a)(1)(A) does not reach the President's suspension of entry under § 1182(f).

This argument, however, presents a clear conflict between § 1152(a)(1)(A) and § 1182, because it would enable the President to restore discrimination on the basis of nationality that Congress sought to eliminate. It is our duty, if possible, to reconcile the President's statutory authority under § 1182(f) with the non-discrimination mandate of § 1152(a)(1)(A). We begin with the instruction that "all parts of a statute, if at all possible, are to be given effect." *Weinberger v. Hyson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633 (1973); *accord Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("A court must . . . fit, if possible, all parts into an harmonious whole." (internal citation and quotation marks omitted)). We also look "to the design of the statute as a whole and to its object and policy." *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991) (quoting *Crandon v. United States*, 494 U.S. 152, 158 (1990)).

Under the Government's argument, the President could circumvent the limitations set by § 1152(a)(1)(A) by permitting the issuance of visas to nationals of the six designated countries, but then deny them entry. Congress could not have intended to permit the President to flout § 1152(a) so easily. *See Dada v. Mukasey*, 554 U.S. 1, 16 (2008) (courts should not read statutes in such a way that renders them a "nullity" or is "unsustainable").

To avoid this result, and to give effect to § 1152(a)(1)(A), the section "is best read to prohibit discrimination throughout the visa process, which must include the decision whether to admit a visa holder upon presenting the visa." Brief of Former Immigration and Homeland Security Officials as Amici Curiae, Dkt. No. 176 at 9. In prohibiting nationality-based discrimination in the issuance of immigrant visas, Congress also in effect prohibited nationality-based discrimination in the admission of aliens. "Congress could not have intended to prohibit discrimination at the embassy, but permit it at the airport gate." Brief of Technology Companies as Amici Curiae, Dkt. No. 180 at 20. We do not suggest that visa holders must gain automatic entry into the United States, but rather, that visa holders cannot be discriminated against on the basis of "race, sex, nationality, place of birth, or place of residence" throughout the visa process, whether during the issuance of a visa or at the port of entry.[19]

Our conclusion that § 1152(a)(1)(A)'s nondiscrimination mandate cabins the President's authority under § 1182(f) is reinforced by other canons of statutory construction.

First, a later enacted, more specific statute generally governs over an earlier, more general one. *See* Antonin Scalia & Bryan A. Garner, *Reading Law:*

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[19] While a foreign national may properly obtain a visa, this does not guarantee entry into the United States because they may otherwise be inadmissible. *See* 8 U.S.C. § 1201(h) ("Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted to the United States."); *see also* 8 U.S.C. § 1182 (listing the myriad ways an alien can be deemed inadmissible).

The Interpretation of Legal Texts 183-87 (2012). Here, § 1152(a)(1)(A) was enacted in 1965, after § 1182(f) was enacted in 1952. Section 1152(a)(1)(A) is also more specific, and sets a limitation on the President's broad authority to exclude aliens—he may do so, but not in a way that discriminates based on nationality. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) ("The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one.").

Second, § 1152(a)(1)(A) specifically identifies exemptions from the non-discrimination mandate, implying that unmentioned sections are not exempted. *See United Dominion Indus., Inc. v. United States*, 532 U.S. 822, 836 (2001) ("The logic that invests the omission with significance is familiar: the mention of some implies the exclusion of others not mentioned."). Section 1152(a)(1)(A) explicitly exempts three different INA provisions from its application—8 U.S.C. §§ 1101(a)(27), 1151(b)(2)(A)(i), and 1153—all of which deal with giving preference to certain immigrants, such as family members of current citizens and permanent residents. Had Congress likewise intended to permit § 1182(f) to override § 1152(a)(1)(A)'s non-discrimination requirement, it would have done so in the same way it did for the other provisions.

The Government contends that §§ 1182(f) and 1185(a)(1) "have long been understood to permit the president to draw nationality-based distinctions." However, as discussed above, *supra* note 13, prior executive

orders and proclamations did not suspend classes of aliens on the basis of national origin, but instead on the basis of affiliation or culpable conduct. *See* Kate M. Manuel, *Executive Authority to Exclude Aliens: In Brief* 6-10, Congressional Research Service (2017). The other instances cited by the Government are distinguishable. The executive order at issue in *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155 (1993), made no nationality-based distinctions and concerned "suspend[ing] the entry of aliens coming by sea to the United States without necessary documentation." Exec. Order No. 12807, 57 Fed. Reg. 23133 (May 24, 1992). President Carter's executive orders in response to the Iranian hostage crisis delegated authority to the Secretary of State and the Attorney General to prescribe limitations governing the entry of Iranian nationals and did not ban Iranian immigrants outright. *See* Exec. Order 12172, 44 Fed. Reg. 67947 (Nov. 26, 1979), *amended by* Exec. Order 12206, 45 Fed. Reg. 24101 (Apr. 7, 1980). Finally, President Reagan's Proclamation 5517 suspended the entry of Cuban nationals coming as immigrants, with some exceptions. 51 Fed. Reg. 30470 (Aug. 22, 1986). The proclamation did not exclude all foreign nationals, as exceptions were provided, and the proclamation was in response to Cuba's decision "'to suspend all types of procedures regarding the execution' of the December 14, 1984, immigration agreement between the United States and Cuba."[20]

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[20] Because these executive actions were not challenged as violations of § 1182(f) or § 1152(a)(1)(A), "the judiciary [has not] address[ed] whether the order[s] complied with those provisions or the Constitution." *Int'l Refugee Assistance Project*, 2017 WL 2273306, at *45 n.11 (Wynn, J., concurring).

Id. To be clear, Presidents have invoked §§ 1182(f) and 1185(a)(1) to restrict certain aliens or classes of aliens from entering the United States, but EO2 is unprecedented in its scope, purpose, and breadth.

The Government also argues that the President may engage in discrimination on the basis of nationality because of the exception provided in § 1152(a)(1)(B). Section 1152(a)(1)(B) provides, "[n]othing in [§ 1152(a)(1)(A)] shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed." However, this provision governs the Secretary of State's manner and place for processing applications, not the President's asserted ability to deny immigrant visas on the basis of nationality.

Having considered the President's authority under § 1182(f) and the non-discrimination mandate of § 1152(a)(1)(A), we also conclude that Plaintiffs have shown a likelihood of success on the merits of their claim that Section 2(c) of the Order, in suspending the issuance of immigrant visas and denying entry based on nationality, exceeds the restriction of § 1152(a)(1)(A) and the overall statutory scheme intended by Congress.

3

Aside from the President's failure to make the requisite findings to justify reducing the entry of refugees in fiscal year 2017 as an exercise of authority under § 1182(f), Plaintiffs contend that 8 U.S.C. § 1157 circumscribes the President's actions in setting the number of refugees to be admitted this fiscal year. We agree.

The Refugee Act of 1980 amended the INA "to provide a permanent and systematic procedure for the admission to this country of refugees of special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted." Pub. L. No. 96-212, § 101, 94 Stat. 102 (1980).

The Act requires that the President, after consulting with Congress, set the annual admission of refugees before the beginning of every fiscal year:

> [T]he number of refugees who may be admitted under this section in any fiscal year . . . shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

8 U.S.C. § 1157(a)(2). "Appropriate consultation" is defined as "discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives." *Id.* § 1157(e). After undergoing this process in 2016, President Obama determined that the admission of 110,000 refugees to the United States during fiscal year 2017 was justified by humanitarian concerns or otherwise in the national interest. *See* 81 Fed. Reg. at 70315. Section 6(b) of EO2 reduced the refugee admission cap for the same year to 50,000. *See* 82 Fed. Reg. at 13216.

The statute requires the President to set the number of annual refugee admissions (1) before the start of the new fiscal year, and (2) after appropriate consulta-

tion with Congress. The Government responds that § 1157 only refers to a ceiling—not the floor—for the number of refugees who may be admitted, and that §§ 1182(f) and 1185(a)(1) permit the President to lower the number of refugees permitted to enter.

We disagree. This interpretation reads out the language that the number of refugees who may be admitted *shall be* the number determined by the President. *See* 8 U.S.C. § 1157(a)(2). The Government's argument would require us to conclude that Congress set forth very specific requirements for the President to provide the number and allocation of the refugees to be admitted as justified by humanitarian concerns or the national interest, after appropriate consultation, only to permit the President to order a midyear reduction in the level of refugee admissions, and to do so without consulting Congress. Section 1157 contemplates that the President, after consultation with Congress, may *increase* the number of refugees admitted in the middle of the fiscal year, but does not provide a mechanism for the President to *decrease* the number of refugees to be admitted mid-year. *See id.* § 1157(b) (describing how, after appropriate consultation, the President may fix a number of additional refugees to be admitted to the United States).

Well-settled interpretive canons further explain why § 1182(f) does not give the President authority to override the requirements of § 1157. First, applying the "later in time" canon, § 1182(f) was adopted in 1952, and § 1157 was adopted in 1980, indicating that this subsequent statute shapes the scope of the President's authority. *See Brown & Williamson Tobacco Corp.*, 529 U.S. at 143 ("The 'classic judicial task of reconciling

many laws enacted over time, and getting them to 'make sense' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute.'" (quoting *United States v. Fausto*, 484 U.S. 439, 453 (1988))).

Second, § 1157, the more specific provision, controls the more general § 1182(f). *See id.* ("This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand."); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976). Section 1157 provides a very specific process for "appropriate consultation" that the President must follow before setting the number of refugees to be admitted to the United States that is justified by humanitarian concerns or is otherwise in the national interest. "Appropriate consultation" requires in-person discussions between cabinet-level representatives and members of Congress "to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, [and] to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest . . . ." 8 U.S.C. § 1157(e). As part of the consultation, the Executive also must present the following information:

> (1) A description of the nature of the refugee situation.
>
> (2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came.

> (3) A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and resettlement.
>
> (4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.
>
> (5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.
>
> (6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.
>
> (7) Such additional information as may be appropriate or requested by such members.

Id. According to the statute, this information would ideally be provided at least two weeks in advance of the discussions. *Id.*

Congress prescribed specific actions the President must take before setting the number of refugees who may be admitted as justified by humanitarian concerns or as otherwise in the national interest. *See generally* 8 U.S.C. § 1157. The President relied on § 1182(f)—an earlier and more general provision—to conclude that admission of refugees above 50,000 is detrimental to the interest of the United States. But § 1157, a "narrow, precise, and specific" statutory provision, may not be overridden by § 1182(f), a provision "covering a more generalized spectrum" of issues. *Radzanower*, 426 U.S. at 153-54; *see also Nitro-Lift Techs., LLC v. Howard*, 133 S. Ct. 500, 504 (2012) (explaining that the

interpretive principle *generalia specialibus non derogant* means that "the specific governs the general" and applies to conflict between "laws of equivalent dignity").

As a result, Plaintiffs have also shown a likelihood of success on the merits for their argument that Section 6(b) of EO2 conflicts with 8 U.S.C. § 1157.

4

Plaintiffs additionally argue that EO2 conflicts with 8 U.S.C. § 1182(a)(3)(B), which sets forth detailed and "specific criteria for determining terrorism-related inadmissibility." *Din*, 135 S. Ct. at 2140.

EO2 attempts to eliminate the marginal risk of "erroneously permitting entry of a national of one of these countries who intends to commit terrorist acts," 82 Fed. Reg. at 13211, by suspending entry of all nationals from the six designated countries. We need not decide the precise scope of § 1182(f) authority in relation to § 1182(a)(3)(B) because the President has not met the precondition to exercising his power under § 1182(f), that is, of making a detrimentality finding. We note, however, that executive action should not render superfluous Congress's requirement that there be a "reasonable ground to believe" that an alien "is likely to engage after entry in any [specifically defined] terrorist activity," 8 U.S.C. § 1182(a)(3)(B)(i)(II), and other specific grounds for terrorism-related admissibility. *Cf. Abourezk*, 785 F.2d at 1049 n.2 ("The President's sweeping proclamation power [under § 1182(f)] provides a safeguard against the danger posed by any particular case or class of cases *that is not covered* by one of the categories in section 1182(a)." (emphasis added)); *Allende v. Shultz*, 845 F.2d 1111, 1118 (1st Cir.

1988) ("Each subsection [of § 1182(a)] creates a different and distinct ground for exclusion.").

5

Finally, we note that in considering the President's authority, we are cognizant of Justice Jackson's tripartite framework in *Youngstown Sheet & Tube Co. v. Sawyer*. *See* 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring). Section 1182(f) ordinarily places the President's authority at its maximum. "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Id.* at 635. However, given the express will of Congress through § 1152(a)(1)(A)'s non-discrimination mandate, § 1157's procedure for refugee admissions to this country, and § 1182(a)(3)(B)'s criteria for determining terrorism-related inadmissibility, the President took measures that were incompatible with the expressed will of Congress, placing his power "at its lowest ebb." *Id.* at 637. In this zone, "Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system." *Id.* at 638. We have based our decision holding the entry ban unlawful on statutory considerations, and nothing said herein precludes Congress and the President from reaching a new understanding and confirming it by statute. If there were such consensus between Congress and the President, then we would view Presidential power at its maximum, and not in the weakened state based on conflict with statutory law. *See id.* at 635-38.

* * *

In sum, we conclude that Plaintiffs have shown a likelihood of success on the merits at least as to their arguments that EO2 contravenes the INA by exceeding the President's authority under § 1182(f), discriminating on the basis of nationality, and disregarding the procedures for setting annual admissions of refugees.[21]

C

The current record is sufficient to permit the court's evaluation of the irreparable harms threatening Plaintiffs. Plaintiffs identify harms, such as prolonged separation from family members, constraints to recruiting and attracting students and faculty members to the University of Hawai'i, decreased tuition revenue, and the State's inability to assist in refugee resettlement. Many of these harms are not compensable with monetary damages and therefore weigh in favor of finding irreparable harm. *See, e.g.*, *Washington*, 847 F.3d at 1169 (identifying harms such as harms to States' university employees and students, separated families, and stranded States' residents abroad); *Regents of Univ. of Cal. v. Am. Broad. Cos., Inc.*, 747 F.2d 511, 520 (9th Cir. 1984) (crediting intangible harms such as the "impairment of their ongoing recruitment programs [and] the dissipation of alumni and community goodwill and support garnered over the years"); *cf. Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 503-04 (1977)

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[21] Because this claim relates to EO2's conflict with the INA, we leave open whether and in what circumstances the President may suspend entry under his inherent powers as commander-in-chief or in a time of national emergency. *See, e.g.*, *Legal Assistance for Vietnamese Asylum Seekers*, 45 F.3d at 473.

(explaining that "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition").

We conclude Plaintiffs are likely to suffer irreparable harm in the absence of preliminary relief.

D

In considering the equities of a preliminary injunction, we next "balance the competing claims of injury" and "consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24.

The district court did not abuse its discretion in finding that the balance of hardships tipped in Plaintiffs' favor. The Government argues that the injunction causes direct, irreparable injury by constraining the Executive's authority in "protect[ing] national security on behalf of the entire United States."[22] "[T]he Government's interest in combating terrorism is an urgent objective of the highest order." *Humanitarian*

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[22] To the extent the Government argues that it is injured simply by nature of the judiciary limiting the President's authority, *ipso facto*, when it argues that it suffered a "form of irreparable injury" because it was "enjoined by a court from effectuating statutes enacted by representatives of its people," we reject that argument. *See Robel*, 389 U.S. at 264 ("[The] concept of 'national defense' cannot be deemed an end in itself, justifying any exercise of . . . power designed to promote such a goal. Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart."); *see also Int'l Refugee Assistance Project*, 2017 WL 2273306, at *25 (rejecting the Government's "institutional injury" argument, as "even the President's actions are not above judicial scrutiny").

Law Project, 561 U.S. at 28. Nonetheless, the President must exercise his authority under § 1182(f) lawfully by making sufficient findings justifying that entry of certain classes of aliens would be detrimental to the national interest and ensuring that such exercise does not conflict with other INA provisions. Because the President has not done so, we cannot conclude that national security interests outweigh the harms to Plaintiffs. *See Int'l Refugee Assistance Project*, 2017 WL 2273306, at *32 (Keenan, J., concurring in part and concurring in the judgment).

Further, the Government has not put forth evidence of injuries resulting from the preliminary injunction, or how the screening and vetting procedures in place before the Order was enjoined were inadequate such that the Order should take immediate effect. Continuing to enjoin portions of EO2 restores immigration procedures and programs to the position they were in prior to its issuance. *See Washington*, 847 F.3d at 1168; *see also* Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 9 (explaining that a number of amici officials, in office on January 20, 2017 and current on active intelligence, knew of no "credible terrorist threat streams directed against the United States" at that time).

In weighing the harms, the equities tip in Plaintiffs' favor.

E

Plaintiffs must finally show that preliminary injunctive relief is in the public interest.

National security is undoubtedly a paramount public interest. *See Haig v. Agee*, 453 U.S. 280, 307 (1981)

("[N]o governmental interest is more compelling than the security of the Nation.").[23] Although we recognize that "sensitive and weighty interests of national security and foreign affairs" are implicated, *Humanitarian Law Project*, 561 U.S. at 33-34, the President must nonetheless exercise his executive power under § 1182(f) lawfully. The public interest is served by "curtailing unlawful executive action." *Texas*, 809 F.3d at 187.

The public interests in uniting families and supporting humanitarian efforts in refugee resettlement sup-

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[23] Several amici contend that the Order not only serves no national security interest, but actually harms our security. *See, e.g.*, Brief of Former National Security Officials as Amici Curiae, Dkt. No. 108 at 2 (explaining that the Order will harm the country's national security and foreign policy interest: "It will endanger troops in the field, and disrupt key counterterrorism and national security partnerships. It will aid the propaganda effort of the Islamic State in Iraq and the Levant ("ISIL") and support its recruitment message. By feeding the narrative that the United States is at war with Islam, the Order will impair relationships with the very Muslim communities that law enforcement professionals rely on to address the threat of terrorism. And it will have a damaging humanitarian and economic impact."); Brief of Former Federal Immigration and Homeland Security Officials as Amici Curiae, Dkt. No. 176 at 20-21 ("[T]he Order weakens vetting protocols and procedures by using national-origin discrimination as a substitute for individualized threat assessments. The Order also threatens to fracture critical military, intelligence, and counterterrorism partnerships and hinder cooperation with the very communities with which law enforcement professionals work to disrupt terrorist plots."); Brief of *Doe* Plaintiffs as Amici Curiae, Dkt. No. 276, Ex. G., U.S. Dep't of State, Dissent Channel: Alternatives to Closing Doors in Order to Secure Our Borders (voicing the State Department officers' concerns about EO1). A draft DHS report also concluded that citizenship "is unlikely to be a reliable indicator of potential terrorist activity."

port the conclusion that the public interest is served by preliminarily enjoining EO2 and maintaining the status quo. *Cf. Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005) ("Public policy supports recognition and maintenance of a family unit. The [INA] was intended to keep families together. It should be construed in favor of family units and the acceptance of responsibility by family members."); *Kaliski v. Dist. Dir. of INS*, 620 F.2d 214, 217 (9th Cir. 1980) (explaining that "the humane purpose" of the INA is to reunite families).

Amici also have identified specific harms that will result if EO2 takes effect, bolstering the conclusion that the injunction is in the public interest. They explain that EO2 would, *inter alia*: curtail children's ability to travel to the United States to obtain life-saving medical care, *see* Brief of the Foundation for the Children of Iran and Iranian Alliances Across Borders as Amici Curiae, Dkt. No. 77; undermine the efforts of religious organizations in the United States rendering humanitarian aid, *see* Brief of Episcopal Bishops as Amici Curiae, Dkt. No. 87; compromise the diversity interests that are central to universities, *see* Brief of New York University as Amicus Curiae, Dkt. No. 95; deter international students, faculty, and scholars from studying at American universities and harm the research mission of universities, *see* Brief of Colleges and Universities as Amici Curiae, Dkt. No. 97; impose additional hardship for child refugees already facing violence and trauma, *see* Brief of Professional Society on the Abuse of Children as Amicus Curiae, Dkt. No. 107; immediately harm refugees who will be denied entry and risk the vitality of entire refugee assistance

programs and resettlement efforts, *see* Brief of Interfaith Group of Religions and Interreligious Organizations as Amici Curiae, Dkt. No. 121, Brief of Oxfam America as Amicus Curiae, Dkt. No. 149, Brief of HIAS, IRC, and USCRI as Amici Curiae, Dkt. No. 155, Brief of *Doe* Plaintiffs as Amici Curiae, Dkt. No. 276; uniquely exclude Muslim family members, scholars, religious leaders, and professionals from entry, *see* Brief of Muslim Rights, Professional, and Public Health Organizations as Amici Curiae, Dkt. No. 124, Brief of Muslim Justice League et al. as Amici Curiae, Dkt. No. 207; inflict proprietary harms on the states by harming state colleges, disrupting staffing and research at state medical institutions, and reducing tax revenues and reinvestment of refugee funding into local economies, *see* Brief of Illinois et al. as Amici Curiae, Dkt. No. 125; undermine trust between law enforcement and immigrant communities and inflict financial and social costs, such as loss of tourism dollars, *see* Brief of Chicago et al. as Amici Curiae, Dkt. No. 137; interfere with union members' ability to do their work and serve the American public, *see* Brief of Service Employees International Union et al. as Amici Curiae, Dkt. No. 166; harm American competitiveness by disrupting ongoing business operations and inhibiting technology companies' abilities to attract talent, business, and investment to the United States, *see* Brief of Technology Companies as Amici Curiae, Dkt. No. 180, Brief of Massachusetts Technology Leadership Council as Amicus Curiae, Dkt. No. 194; place victims of gender-based violence at particular risk, *see* Tahirih Justice Center et al. as Amici Curiae, Dkt. No. 185; interrupt foreign artists' exhibitions and performances in the United States, *see* Brief of the Associa-

tion of Art Museum Directors et al. as Amici Curiae, Dkt. No. 204; and prevent U.S. citizens and lawful permanent residents from receiving visits from or reuniting with family members, *see* Brief of Human Rights First et al. as Amici Curiae, Dkt. No. 222.

The public interest favors affirming the preliminary injunction. *See Winter*, 555 U.S. at 24 ("In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.").

* * *

Plaintiffs have satisfied all four factors to warrant entry of the preliminary injunction. *See id.* at 20. The district court did not abuse its discretion in granting an injunction.

V

With respect to the injunction's scope, the Government contends that the district court erred by enjoining internal government procedures, giving nationwide relief, and entering an order against the President.

We review the scope of a preliminary injunction for abuse of discretion. *McCormack v. Hiedeman*, 694 F.3d 1004, 1010 (9th Cir. 2012). Although the district court has "considerable discretion in fashioning suitable relief and defining the terms of an injunction," *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991), there are limitations on this discretion. Injunctive relief must be tailored to remedy the specific harms shown by the plaintiffs. *See id.* ("Injunctive relief . . . must be tailored to remedy the specific harm alleged."); *Califano v. Yamasaki*, 442 U.S. 682,

702 (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established . . . ."). "An overbroad injunction is an abuse of discretion." *Stormans*, 586 F.3d at 1140.

A

The Government first argues that the injunction improperly enjoins enforcement of parts of Sections 2 and 6 that are unrelated to any alleged harm to Plaintiffs—specifically, the provisions that pertain to internal government operations and procedures.

Portions of Section 2 require various agencies to conduct a review of worldwide vetting procedures to determine what additional information, if any, is needed from each foreign country to adjudicate a visa application, prepare a report on the results of the worldwide review, submit a list of countries that do not provide requested information to the President, and recommend other lawful restrictions or limitations deemed necessary for the security of the United States. 82 Fed. Reg. at 13212-13. Likewise, during the interim period when refugee admissions is suspended, Section 6 directs the Secretary of State, in conjunction with the Secretary of Homeland Security and the Director of National Intelligence, to conduct an internal review and implement additional procedures identified by the review. *Id.* at 13215. Section 6 also requires the Secretary of State to review the "existing law" to determine how State and local jurisdictions could have greater involvement in the process of determining refugee placement. *Id.* at 13216.

Although other unenjoined sections of EO2 permit interagency coordination to review vetting procedures,

the district court nonetheless abused its discretion in enjoining the inward-facing tasks of Sections 2 and 6. Enjoining the entirety of Sections 2 and 6 was not narrowly tailored to addressing only the harms alleged. For example, internal determinations regarding the necessary information for visa application adjudications do not have an obvious relationship to the constitutional rights at stake or statutory conflicts at issue here. Plaintiffs have not shown how the Government's internal review of its vetting procedures will harm them. We vacate the preliminary injunction to the extent it enjoins internal review procedures that do not burden individuals outside of the executive branch of the federal government. *See Bresgal v. Brock*, 843 F.2d 1163, 1171 (9th Cir. 1987) ("An injunction against a government agency must be structured to take into account 'the well-established rule that the government has traditionally been granted the widest latitude in the "dispatch of its own internal affairs."'" (quoting *Rizzo v. Goode*, 423 U.S. 362, 378-79 (1976))); *cf. Bowen v. Roy*, 476 U.S. 693, 700 (1986) (explaining that the Free Exercise Clause "affords an individual protection from certain forms of governmental compulsion [but] does not afford an individual a right to dictate the conduct of the Government's internal procedures").

B

The Government next argues that the district court erred in enjoining Section 6's refugee provisions, specifically the suspension of refugees and adoption of the 50,000 refugee cap.

The State alleges that Section 6 will force it to abandon the refugee program that embodies the State's tra-

ditions of openness and diversity. The State has several policies that aid and resettle refugees, and has a "long history of welcoming refugees impacted by war and oppression." As discussed earlier, OCS, a division of the Department of Labor and Industrial Relations, is directed to "[a]ssist and coordinate the efforts of all public and private agencies providing services which affect the disadvantaged, refugees, and immigrants." Haw. Rev. Stat. § 371K-4(5). OCS also operates the Refugee Social Services Program and the Refugee Cash and Medical Assistance Program. *See* Department of Labor and Industrial Relations, Office of Community Services, 2017 Hawaii State Plan for Refugee Assistance and Services (2016); https://labor.hawaii.gov/ocs/files/2013/02/FY17-State-Plan-for-Hawaii.pdf (last visited June 6, 2017). The State further highlights that aiding refugees is central to the mission of private organizations, like Catholic Charities Hawai'i and Pacific Gateway Center.

Since fiscal year 2010, at least twenty refugees have arrived and resettled in Hawai'i, and in fiscal year 2017 to date, three have resettled there. While this is a small number of refugees, it does not diminish Hawai'i's interest in effectuating its refugee programs and investments. Enjoining the suspension and cap would protect the State's programs and efforts in resettling refugees.

Although the Government is correct in pointing out that most of Plaintiffs' alleged injuries center on the implementation of Section 2(c), at this preliminary stage of litigation, the district court did not abuse its discretion by enjoining Section 6's operative provisions suspending refugee admission on the basis of the cur-

rent record. We therefore reject the Government's challenge on this point.

C

The Government next contends that the district court erred by enjoining Section 2(c) as to all persons everywhere, rather than redressing only Plaintiffs' injuries. The Government requests that the nationwide injunction be limited to Plaintiffs only.[24]

The district court identified two reasons to support a nationwide injunction. First, the district court emphasized that in certain circumstances, it is appropriate for courts to issue nationwide injunctions. *Hawai'i PI*, 2017 WL 1167383, at *8. As the Fifth Circuit observed in *Texas v. United States*, nationwide injunctions are particularly appropriate in the immigration context because "immigration laws of the United States should be enforced vigorously and *uniformly*." 809 F.3d at 187-88; *see* U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . [t]o establish an *uniform* Rule of Naturalization . . . .") (emphasis added). Enjoining the conduct as to Plaintiffs may result in "fragmented immigration policy [that] would run afoul of the constitutional and statutory requirement for uniform immigration law and policy." *Washington*, 847 F.3d at 1166-67 (citing to *Texas*, 809 F.3d at 187-88)).

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[24] The Government also argues that to the extent § 1152(a)(1)(A) cabins executive authority, the injunction entered by the district court can only apply to immigrant visas and should not apply to *nonimmigrant* visas. We decline to narrow the injunction on the grounds proposed by the Government because, even assuming the Government is correct, the President failed to meet the precondition to exercising his authority under § 1182(f).

Second, the district court made clear that the Government did not provide a workable framework for narrowing the geographic scope of the injunction. *See id.* at 1167 ("[E]ven if limiting the geographic scope of the injunction would be desirable, the Government has not proposed a workable alternative form of the TRO that accounts for the nation's multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States' borders."). On appeal, the Government has not offered any new workable method of limiting the geographic scope of the injunction.

An "injunction is not necessarily made over-broad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—*if such breadth is necessary to give prevailing parties the relief to which they are entitled.*" *Bresgal*, 843 F.2d at 1170-71. Narrowing the injunction to apply only to Plaintiffs would not cure the statutory violations identified, which in all applications would violate provisions of the INA. *See Int'l Refugee Assistance Project*, 2017 WL 2273306, at *27 (affirming the nationwide injunction because Section 2(c) of EO2 likely violates the Establishment Clause, and its constitutional deficiency "would endure" in all applications); *cf. Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) ("[W]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." (quoting *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989))).

The district court did not abuse its discretion in entering a nationwide preliminary injunction.

D

Finally, the Government argues that the district court erred by issuing an injunction that runs against the President himself. This position of the Government is well taken. Generally, we lack "jurisdiction of a bill to enjoin the President in the performance of his official duties." *Franklin v. Massachusetts*, 505 U.S. 788, 802-03 (1992) (quoting *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866)); *see id.* at 802 ("[I]njunctive relief against the President himself is extraordinary, and should . . . raise[] judicial eyebrows."). Injunctive relief, however, may run against executive officials, including the Secretary of Homeland Security and the Secretary of State. *See, e.g.*, *Youngstown Sheet & Tube Co.*, 343 U.S. at 588-89 (holding that President Truman did not act within his constitutional power in seizing steel mills and affirming the district court's decision enjoining the Secretary of Commerce from carrying out the order); *Franklin*, 505 U.S. at 802-03.

We conclude that Plaintiffs' injuries can be redressed fully by injunctive relief against the remaining Defendants, and that the extraordinary remedy of enjoining the President is not appropriate here. *See Franklin*, 505 U.S. at 803. We therefore vacate the district court's injunction to the extent the order runs against the President, but affirm to the extent that it runs against the remaining "Defendants and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them."

E

The district court did err in enjoining the entirety of Sections 2 and 6, particularly the portions that pertain to interagency review, despite the Government's requests for clarification and requests to narrow the injunction to enjoin conduct that actually harms Plaintiffs. The district court abused its discretion in enjoining inward-facing agency conduct because enjoining this conduct would not remedy the harms asserted by Plaintiffs. Further, the district court abused its discretion in enjoining the President. We would not be able to affirm in full the preliminary injunction even if Plaintiffs were also likely to succeed on their constitutional claims, for reasons that enjoining internal review procedures does not remedy harms to Plaintiffs and because it is improper to enjoin the President without necessity. As we have affirmed the injunction in part on statutory grounds, and vacated certain parts on the basis of considerations governing the proper scope of an injunction, we need not consider the constitutional claims here.

VI

We affirm in part and vacate in part the district court's preliminary injunction order. As to the remaining Defendants, we affirm the injunction as to Section 2(c), suspending entry of nationals from the six designated countries for 90 days; Section 6(a), suspending USRAP for 120 days; and Section 6(b), capping the entry of refugees to 50,000 in the fiscal year 2017. We vacate the portions of the injunction that prevent the Government from conducting internal reviews, as otherwise directed in Sections 2 and 6, and the injunction to

the extent that it runs against the President. We remand the case to the district court with instructions to re-issue a preliminary injunction consistent with this opinion.[25]

AFFIRMED in part; VACATED in part; and REMANDED with instructions. Each party shall bear its own costs on appeal.

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[25] The Government's motion for a stay pending appeal is **DENIED** as moot.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. NO. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH,
PLAINTIFFS

v.

DONALD J. TRUMP, ET AL.,
DEFENDANTS

[July 6, 2017]

ORDER DENYING PLAINTIFFS' EMERGENCY MOTION TO CLARIFY SCOPE OF PRELIMINARY INJUNCTION

On June 26, 2017, the United States Supreme Court granted certiorari in this matter, granted in part the Government's stay application, "and narrow[ed] the scope of the injunction[]" entered by this Court with respect to Sections 2(c), 6(a), and 6(b) of Executive Order 13,780.[1] *Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436 and 16-1540, slip op. at 11-12 (June 26, 2017) [hereinafter Slip. Op.] (per curiam). Plaintiffs State of Hawai'i and Ismail Elshikh, Ph.D. seek clarifi-

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[1] Executive Order 13,780 is entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 6, 2017) [hereinafter EO-2].

cation from this Court regarding the Supreme Court's modification of the preliminary injunction, in light of the manner in which the Government began implementing the non-enjoined portions of EO-2 on June 29, 2017. *See* Pls.' Emergency Mot. to Clarify Scope of Prelim. Inj., ECF No. 293 [hereinafter Motion]; *see also* Pls.' Proposed Order Granting Mot., ECF No. 315-1 (reflecting consideration of "the preliminary injunction entered on March 29, 2017 (Dkt. No. 270), amended on June [1]9, 2017 (Dkt. No. 291), and modified by subsequent decision of the United States Supreme Court").

Upon careful consideration of the parties' submissions, it is evident that the parties quarrel over the meaning and intent of words and phrases authored not by this Court, but by the Supreme Court in its June 26, 2017 *per curiam* decision. That is, the parties' disagreements derive neither from this Court's temporary restraining order, this Court's preliminary injunction, nor this Court's amended preliminary injunction,[2] but from the modifications to this Court's injunction ordered by the Supreme Court. Accordingly, the clarification

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[2] *See Hawaii v. Trump*, — F. Supp. 3d —, 2017 WL 1011673 (D. Haw. Mar. 15, 2017) (TRO); *Hawaii v. Trump*, — F. Supp. 3d —, 2017 WL 1167383 (D. Haw. Mar. 29, 2017) (Prelim. Inj.); Am. Prelim. Inj., *Hawaii v. Trump*, CV. NO. 17-00050 (D. Haw. June 19, 2017), ECF No. 291.

to the modifications that the parties seek should be more appropriately sought in the Supreme Court.[3]

The Supreme Court stayed the preliminary injunction with respect to Section 2(c) in the following manner—

> The injunctions remain in place only with respect to parties similarly situated to Doe, Dr. Elshikh, and Hawaii. In practical terms, this means that § 2(c) may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States. All other foreign nationals are subject to the provisions of EO-2.

Slip Op. at 12.[4]

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[3] Federal Rule of Civil Procedure 62(c) allows this Court to issue further orders with respect to an injunction it issued, notwithstanding appeal. *See Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). "[A]n application with regard to an injunction ordinarily must be made in the first instance to the district court under Rule 62(c) and it is only if relief is not obtained there that the appellate court will consider acting under Rule 62(g)." 11 Wright, Miller, & Kane, Fed. Prac. & Proc. Civ. § 2904 (3d ed. 2013). That is perhaps the reason Plaintiffs opted to proceed here. However, where, as here, the challenges do not derive from this Court's *own* orders, the Court sees no reason why the starting point had to originate here, or even why it made sense to do so.

[4] The Supreme Court explained that the facts in the instant case and in No. 16-1436 (*IRAP*) "illustrate the sort of relationship that qualifies"—

In evaluating the Government's application for a stay, the Supreme Court observed that, "[i]n assessing the lower courts' exercise of equitable discretion, we

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> For individuals, a close familial relationship is required. A foreign national who wishes to enter the United States to live with or visit a family member, like Doe's wife or Dr. Elshikh's mother-in-law, clearly has such a relationship. As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO-2. The students from the designated countries who have been admitted to the University of Hawaii have such a relationship with an American entity. So too would a worker who accepted an offer of employment from an American company or a lecturer invited to address an American audience.

Slip Op. at 12. With respect to enjoined portions of Section 6 relating to refugees, the Supreme Court reasoned that the "equitable balance struck [with respect to Section 2(c)] applies in this context as well." Slip Op. at 13. It held that—

> An American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee can legitimately claim concrete hardship if that person is excluded. As to these individuals and entities, we do not disturb the injunction. But when it comes to refugees who lack any such connection to the United States, for the reasons we have set out, the balance tips in favor of the Government's compelling need to provide for the Nation's security.
>
> The Government's application to stay the injunction with respect to §§ 6(a) and (b) is accordingly granted in part. Section 6(a) may not be enforced against an individual seeking admission as a refugee who can credibly claim a bona fide relationship with a person or entity in the United States. Nor may § 6(b); that is, such a person may not be excluded pursuant to § 6(b), even if the 50,000-person cap has been reached or exceeded.

Id. (citations omitted).

bring to bear an equitable judgment of our own." Slip Op. at 10 (citing *Nken v. Holder*, 556 U.S. 418, 433 (2009)). The Supreme Court's equitable judgment to "tailor a stay," *id.*, resulted in modifications to this Court's preliminary injunction. These modifications spurred the Government's subsequent efforts to interpret the stay and implement the non-enjoined portions of EO-2 by June 29, 2017. Plaintiffs' Motion challenges only the Government's interpretation of the Supreme Court's June 26, 2017 stay. To be clear, the standard Plaintiffs ask this Court to clarify—i.e., "a credible claim of a bona fide relationship with a person or entity in the United States," Slip Op. at 12—is not set forth in any order of this Court.[5]

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[5] Plaintiffs' briefs acknowledge as much. *See, e.g.*, Pls.' Mem. in Supp. 1, ECF No. 293-1 ("That standard, the Supreme Court made clear, protects any foreign national with a 'close familial relationship' with a person in the United States[.]" (citation omitted)); Pls.' Mem. in Supp. 2 ("This Court should clarify as soon as possible that the Supreme Court meant what it said, and that foreign nationals that credibly claim connections with this country cannot be denied entry under the President's illegal Order."); Pls.' Reply 1, ECF No. 303 ("The Government fundamentally misconstrues the Supreme Court's partial stay. The [Supreme] Court did not concoct an abstract 'bona fide relationship' standard that the Government can tailor to its liking[.]"); Reply 2 ("The Court should correct the Government's path, holding the Government to the clear terms of the Supreme Court's order." (footnote omitted)). *But see* Motion 3 ("The Government has indicated publicly that it will begin enforcing the non-enjoined portions of [EO-2] in a manner that conflicts with this Court's preliminary injunction, as well as the Supreme Court's June 26, 2017 ruling that [EO-2] may not be enforced against foreign nationals and refugees 'who have a credible claim of

Because Plaintiffs seek clarification of the June 26, 2017 injunction modifications authored by the Supreme Court, clarification should be sought there, not here. This Court will not upset the Supreme Court's careful balancing and "equitable judgment" brought to bear when "tailor[ing] a stay" in this matter. Slip Op. at 10. Nor would this district court presume to substitute its own understanding of the stay for that of the originating Court's "exercise of discretion and judgment" in "[c]rafting a preliminary injunction . . . dependent as much on the equities of a given case as the substance of the legal issues it presents." Slip Op. at 9. This Court declines to usurp the prerogative of the Supreme Court to interpret its own order and defers in the first instance. *See Ala. Nursing Home Ass'n v. Harris*, 617 F.2d 385, 388 (5th Cir. 1980) ("Great deference is due the interpretation placed on the terms of an injunctive order by the court who issued and must enforce it."); *cf. Alley v. U.S. Dep't of Health & Human Servs.*, 590 F.3d 1195, 1202 (11th Cir. 2009) ("The district court is in the best position to interpret its own orders." (internal quotation marks omitted)).[6]

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a bona fide relationship with a person or entity in the United States.'" (quoting Slip Op. at 11, 13)).

[6] *See also Regents of the Univ. of Cal. v. Aisen*, No. 15-CV-1766, 2016 WL 4681177, at *1 (S.D. Cal. Sept. 7, 2016) ("The Supreme Court teaches that when questions arise as to the interpretation or application of an injunction order, a party should seek clarification or modification from the issuing court, rather than risk disobedience and contempt.") (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949)).

CONCLUSION

For the foregoing reasons, Plaintiffs' request for clarification is DENIED without prejudice to its re-filing with the Supreme Court.[7]

IT IS SO ORDERED.

Dated: July 6, 2017 at Honolulu, Hawai'i.

[SEAL]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

State of Hawaii, et al. v. Trump, et al.; Civil No. 17-00050 DKW-KSC; **ORDER DENYING PLAINTIFFS' EMERGENCY MOTION TO CLARIFY SCOPE OF PRELIMINARY INJUNCTION**

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[7] Of course, if the Supreme Court wishes for this Court to decide the merits of the issues raised by Plaintiffs' Motion in the first instance, this Court will promptly do so.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-16366

D.C. No 1:17-cv-00050-DKW-KSC

District of Hawaii, Honolulu

STATE OF HAWAII; ISMAIL ELSHIKH,
PLAINTIFFS-APPELLANTS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX W. TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; UNITED STATES OF AMERICA,
DEFENDANTS-APPELLEES

[July 7, 2017]

ORDER

Before: HAWKINS, GOULD, and PAEZ, Circuit Judges.

This is an appeal of the district court's July 6, 2017 denial of Plaintiffs' "Emergency Motion to Clarify Scope of Preliminary Injunction." Plaintiffs requested that the district court "clarify the scope of the Court's June 19, 2017 amended preliminary injunction." The

district court denied the clarification motion, explaining that, because it was the Supreme Court—not the district court—that issued the June 26, 2017 order staying in part the district court's preliminary injunction, clarification of the June 26 order must be sought from the Supreme Court. Plaintiffs have filed an emergency motion requesting that this court enjoin the Government from violating the Supreme Court's June 26 order or directing the district court to do so.

We lack jurisdiction to address Plaintiffs' appeal of the district court's order denying the motion to clarify the scope of the injunction. This court possesses jurisdiction to review only final judgments and a limited set of interlocutory orders. *See* 28 U.S.C. §§ 1291, 1292(a). The district court's order neither resulted in a final judgment nor engaged in action deemed immediately appealable in 28 U.S.C. § 1292(a). Specifically, the district court's order did not "grant[], continu[e], modify[], refus[e], or dissolv[e]" an injunction, or "refus[e] to dissolve or modify" an injunction. *Id.* § 1291(a)(1).

Nor do any of the various judicially-crafted bases for appellate jurisdiction apply under these circumstances. Because the "practical effect" of Plaintiffs' requested relief is declaratory in nature—not injunctive—we do not construe their clarification motion before the district court as one for injunctive relief. *See, e.g.*, *Alsea Valley All. v. Dep't of Commerce*, 358 F.3d 1181, 1186 (9th Cir. 2004). And this scenario does not present an order of "practical finality" because—as discussed below—Plaintiffs may seek injunctive relief from the district court. *Cf. Nehmer v. U.S. Dep't of Veterans Affairs*, 494 F.3d 846, 856 n.5 (9th Cir. 2007); *All*

Alaskan Seafoods, Inc. v. M/V Sea Producer, 882 F.2d 425, 428 n.2 (9th Cir. 1989).

Because we lack jurisdiction to review the district court's order, this appeal is DISMISSED and Plaintiffs' "Emergency Motion under FRAP 8 and Circuit Rule 27-3 for Injunction Pending Appeal" is DENIED as moot.[1]

Finally, we note that although the district court may not have authority to *clarify* an order of the Supreme Court, it does possess the ability to interpret and enforce the Supreme Court's order, as well as the authority to enjoin against, for example, a party's violation of the Supreme Court's order placing effective limitations on the scope of the district court's preliminary injunction. *Cf. United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 79-80 (9th Cir. 1951). But Plaintiffs' motion before the district court was clear: it sought clarification of the Supreme Court's June 26 order, not injunctive relief. Because the district court was not asked to grant injunctive relief or to modify the injunction, we do not fault it for not doing so.

IT IS SO ORDERED.

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[1] Plaintiffs' emergency motion also seeks a writ of mandamus. Because the district court's denial of Plaintiffs' motion for clarification was not clear error, the extraordinary power of mandamus is not appropriate. *See Bauman v. U.S. Dist. Ct.*, 557 F.2d 650, 654-55 (9th Cir. 1977). Plaintiffs' motion for a writ of mandamus is DENIED.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CV. NO. 17-00050 DKW-KSC

STATE OF HAWAI'I AND ISMAIL ELSHIKH,
PLAINTIFFS

v.

DONALD J. TRUMP, ET AL.,
DEFENDANTS

[July 13, 2017]

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO ENFORCE, OR, IN THE ALTERNATIVE, TO MODIFY PRELIMINARY INJUNCTION

INTRODUCTION

On June 26, 2017, the United States Supreme Court granted certiorari in this matter, granted in part the Government's stay application, "and narrow[ed] the scope of the injunction[]" entered by this Court with respect to Sections 2(c), 6(a), and 6(b) of Executive Order 13,780.[1] *Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436 (16A1190) and 16-1540 (16A1191),

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[1] Executive Order 13,780 is entitled, "Protecting the Nation from Foreign Terrorist Entry into the United States," 82 Fed. Reg. 13209 (Mar. 6, 2017) [hereinafter EO-2].

slip op. at 11-12 (U.S. June 26, 2017) [hereinafter Slip. Op.] (per curiam). Plaintiffs challenge the Government's implementation of the non-enjoined portions of EO-2, asking this Court to enforce or, in the alternative, to modify the scope of the existing preliminary injunction. *See* Pls.' Mot. to Enforce or, In the Alternative, to Modify Prelim. Inj., ECF No. 328 [hereinafter Motion].

Upon careful consideration of the parties' expedited submissions, the Court concludes that on the record before it, Plaintiffs have met their burden of establishing that the requested injunctive relief is necessary to preserve the status quo pending appeal regarding the definition of "close familial relationship" employed by the Government with respect to Sections 2(c), 6(a) and 6(b) of EO-2. Plaintiffs have similarly met their burden with respect to refugees with a formal assurance, as it relates to the Government's implementation of Sections 6(a) and 6(b) of EO-2, and participants in the Lautenberg Program. Plaintiffs' Motion is accordingly GRANTED in these respects and DENIED to the extent other relief is sought, for the reasons detailed below.

BACKGROUND

The Court briefly recounts the factual and procedural background relevant to Plaintiffs' Motion.

I. Prior Proceedings

A. This Court's March 29, 2017 Preliminary Injunction

On March 15, 2017, the Court temporarily enjoined Sections 2 and 6 of EO-2 nationwide ("TRO"). *See Hawaii v. Trump*, --- F. Supp. 3d ---, 2017 WL 1011673

(D. Haw. Mar. 15, 2017). Upon Plaintiffs' motion, full briefing, and a March 29, 2017 hearing, the Court converted the TRO into a preliminary injunction ("PI"). *Hawaii v. Trump*, --- F. Supp. 3d ---, 2017 WL 1167383 (D. Haw. Mar. 29, 2017). The Government appealed the Court's ruling on March 30, 2017. Notice of Appeal, ECF No. 271.

B. The Ninth Circuit's June 12, 2017 Opinion

The Ninth Circuit's June 12, 2017 *per curiam* opinion affirmed the injunction as to Section 2(c), suspending entry of nationals from the six designated countries for 90 days; Section 6(a), suspending the U.S. Refugee Admissions Program ("USRAP") for 120 days; and Section 6(b), capping the entry of refugees to 50,000 in fiscal year 2017. *Hawaii v. Trump*, — F.3d —, 2017 WL 2529640, at *29 (9th Cir. June 12, 2017) (per curiam). The Ninth Circuit vacated the portions of the injunction that prevented the Government from conducting internal reviews, as otherwise directed in Sections 2 and 6, and the injunction to the extent that it ran against the President. *Id.*, 2017 WL 2529640, at *29. The Ninth Circuit remanded to this Court with instructions to enter an amended injunction consistent with its opinion. This Court accordingly entered an amended injunction on June 19, 2017, upon issuance of the expedited mandate. Am. Prelim. Inj., *Hawaii v. Trump*, No. 1:17-cv-00050-DKW-KSC (D. Haw. June 19, 2017), ECF No. 291.

II. The Supreme Court's June 26, 2017 Order

The Government petitioned for certiorari and filed an application to stay both the preliminary injunction

entered in this case and the one entered by the District of Maryland in a case now consolidated on appeal. *Int'l Refugee Assistance Project v. Trump*, — F. Supp. 3d —, 2017 WL 1018235 (D. Md. Mar. 16, 2017) [hereinafter *IRAP*] (issuing preliminary injunction); *aff'd in part, vacated in part*, 857 F.3d 554 (4th Cir. May 25, 2017) (No. TDC-17-0361, D. Md.; renumbered No. 17-1351, 4th Cir.). On June 26, 2017, the Supreme Court granted certiorari in both cases. Slip Op. at 9. The Supreme Court also granted "the Government's applications to stay the injunctions, to the extent the injunctions prevent enforcement of §2(c) with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States," Slip Op. at 11-12.

More specifically, the Supreme Court stayed the preliminary injunctions relating to Section 2(c) in the following manner—

> The injunctions remain in place only with respect to parties similarly situated to Doe, Dr. Elshikh, and Hawaii. In practical terms, this means that §2(c) may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States. All other foreign nationals are subject to the provisions of EO-2.

Slip Op. at 12. The Supreme Court explained that the facts in this case and in *IRAP* "illustrate the sort of relationship that qualifies"—

> For individuals, a close familial relationship is required. A foreign national who wishes to enter the United States to live with or visit a family

> member, like Doe's wife or Dr. Elshikh's mother-in-law, clearly has such a relationship. As for entities, the relationship must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading EO-2. The students from the designated countries who have been admitted to the University of Hawaii have such a relationship with an American entity. So too would a worker who accepted an offer of employment from an American company or a lecturer invited to address an American audience. Not so someone who enters into a relationship simply to avoid §2(c): For example, a nonprofit group devoted to immigration issues may not contact foreign nationals from the designated countries, add them to client lists, and then secure their entry by claiming injury from their exclusion.

Slip Op. at 12.

With respect to the enjoined portions of Section 6 relating to refugee admissions and the refugee cap, the Supreme Court reasoned that the "equitable balance struck [with respect to Section 2(c)] applies in this context as well." Slip Op. at 13. It held—

> An American individual or entity that has a bona fide relationship with a particular person seeking to enter the country as a refugee can legitimately claim concrete hardship if that person is excluded. As to these individuals and entities, we do not disturb the injunction. But when it comes to refugees who lack any such connection to the United States, for the reasons we have set out, the balance tips in favor of the Government's compelling need to provide for the Nation's security.

> The Government's application to stay the injunction with respect to §§6(a) and (b) is accordingly granted in part. Section 6(a) may not be enforced against an individual seeking admission as a refugee who can credibly claim a bona fide relationship with a person or entity in the United States. Nor may §6(b); that is, such a person may not be excluded pursuant to §6(b), even if the 50,000-person cap has been reached or exceeded.

Id. (internal citations omitted).

III. Plaintiffs' Challenge To The Government's Implementation Of EO-2

The Government began enforcing the non-enjoined portions of EO-2 on June 29, 2017 at 8:00 p.m. EDT. In doing so, the Government published guidance to its agencies on the implementation and enforcement of EO-2, guidance that has been amended, and which the Government has indicated will be amended again, as circumstances warrant. *See* Katyal Decl., Exs. A-C, & F, ECF Nos. 329-1, 329-2, 329-3, & 329-6.

The Government's guidance defines "close familial relationship" as including a parent, parent-in-law, spouse, fiancé, child, adult son or daughter, son-in-law, daughter-in-law, sibling (whether whole or half), and step relationships. These relationships are exempt from EO-2. The Government's definition does not include

grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law.[2] Plaintiffs challenge the Government's narrower construction.

With respect to refugee program guidance, the Government instructed agencies that, "[t]he fact that a resettlement agency in the United States has provided a formal assurance for a refugee seeking admission . . . is not sufficient in and of itself to establish a qualifying relationship for that refugee with an entity in the United States." Katyal Decl., Ex. B, Dep't of State, *untitled guidance document* (received by Pls. June 29, 2017), ECF No. 329-2. The Government also initially indicated that it had not determined whether refugees with a "bona fide relationship with a person or entity in the United States" would be permitted to travel after July 6, 2017, and would issue further guidance. *See id.* Updated guidance from the State Department instructs its private voluntary agency partners that "[n]o new [advanced booking notifications ('ABNs')] for travel for cases with or without the required bona fide relationship to a person or entity in the United States may be requested at this time. We hope to allow new ABNs for such cases to resume in the

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[2] The Government's first official guidance published on June 29, 2017, before enforcement of Sections 2(c), 6(a), and 6(b), indicated that fiancés would not be considered to be close family members for purposes of applying the Supreme Court's decision. That guidance was subsequently updated to include fiancés. *See* Katyal Decl., Ex. C, Dep't of State, *Exec. Order on Visas*, at 3 (June 29, 2017), ECF No. 329-3, *available at* https://travel.state.gov/content/travel/en/news/important-annoucement.html.

very near future, once we clarify verification procedures." Katyal Decl., Ex. F, E-mail from Lawrence E. Bartlett, Dir., Office of Admissions, Bureau of Population, Refugees, & Migration, to Voluntary Agencies (July 3, 2017, 16:30 EDT), ECF No. 329-6. Plaintiffs contest this guidance, principally asserting that refugees with a formal assurance can credibly claim a bona fide relationship with a refugee resettlement agency.

Plaintiffs additionally request that the Court recognize that certain client relationships with legal services organizations are protected by this Court's injunction, and that the participants in three specific refugee programs are categorically exempt from EO-2: "U.S.-affiliated Iraqis" at risk of persecution because of their contributions to the United States' combat mission in Iraq; participants in the Central American Minors Program; and participants in the Lautenberg Program, each of which, Plaintiffs argue, requires participants to have close family ties with the United States, a relationship with a "designated resettlement agency," or both. Plaintiffs ask the Court to issue an order either enforcing or modifying its amended preliminary injunction to reflect the scope of relief requested in the Motion.[3]

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[3] Plaintiffs request that the Court issue an order enforcing or modifying its preliminary injunction to reflect that

> (1) the injunction bars the Government from implementing the Executive Order against grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States; (2) the injunction prohibits the Government from applying sections 6(a) and 6(b) to exclude refugees who: (i) have a formal assurance from a resettlement

DISCUSSION

I. Legal Standard

Federal Rule of Civil Procedure 62(c) allows this Court to issue further orders with respect to an injunction it issued, notwithstanding appeal, in order to preserve the status quo or ensure compliance with its earlier orders. *See Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001).[4]

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agency within the United States (ii) have a bona fide client relationship with a U.S. legal services organization; or (iii) are in the U.S. Refugee Admissions Program ("USRAP") through the Iraqi Direct Access Program for "U.S.-affiliated Iraqis," the Central American Minors Program, or the Lautenberg Program; (3) the injunction bars defendants from suspending any part of the refugee admission process, including any part of the "Advanced Booking" process, for individuals with a bona fide relationship with a U.S. person or entity; and (4) the preliminary injunction prohibits the Government from applying a presumption that an applicant lacks "a bona fide relationship with a person or entity in the United States."

Mot. 1-2.

[4] *See also Hoffman for & on Behalf of N.L.R.B. v. Beer Drivers & Salesmen's Local Union No. 888*, 536 F.2d 1268, 1276 (9th Cir. 1976) (addressing situations in which a district court "has a continuing duty to maintain a status quo" and stating, "[w]e believe the rule should be, and we so hold that, in the kinds of cases where the court supervises a continuing course of conduct and where as new facts develop additional supervisory action by the court is required, an appeal from the supervisory order does not divest the district court of jurisdiction to continue its supervision, even though in the course of that supervision the court acts upon or modifies the order from which the appeal is taken"). The current status quo pending appeal is the preliminary injunction which enjoins defendants from

Pursuant to Rule 62(c), "[t]he court may modify or broaden the scope of its injunction under its continuing duty to supervise the relief granted if it is informed of new facts that require additional supervisory action."[5] *Nat'l Grange of the Order of Patrons of Husbandry v. Cal. State Grange*, 182 F. Supp. 3d 1065, 1074 (E.D. Cal. 2016) (citing, *inter alia*, *Sys. Fed'n No. 91 v. Wright*, 364 U.S. 642, 647-48 (1961) (holding that a district court has "wide discretion" to modify an injunction based on changed circumstances or new facts); *A & M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098-99 (9th Cir. 2002) (modification of injunction during pendency of appeal was proper to clarify the injunction and supervise compliance in light of new facts)).[6]

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enforcing portions of EO-2, as modified by the Supreme Court's June 26, 2017 order.

[5] *See also Toussaint v. McCarthy*, 801 F.2d 1080, 1090 (9th Cir. 1986) ("A change in the law may constitute a changing circumstance requiring the modification of an injunction. An intervening judicial opinion may require modification of an injunction."), *overruled in part on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

[6] Plaintiffs initially moved this Court to clarify the scope of the injunction, in light of the Supreme Court's June 26, 2017 modification (ECF. No. 293), a motion which the Court denied without reaching the merits. *See Hawaii v. Trump*, — F. Supp. 3d ----, 2017 WL 2882696 (D. Haw. July 6, 2017). On July 7, 2017, the Ninth Circuit dismissed Plaintiffs' appeal of that decision and denied as moot their motion for an injunction pending appeal. *See Hawaii v. Trump*, No. 17-16366, slip op. at 3 (9th Cir. July 7, 2017), ECF No. 3. The Ninth Circuit explained that although this Court does "not have authority to *clarify* an order of the Supreme Court, it does possess the ability to interpret and enforce the Supreme Court's order, as well as the authority to enjoin against, for exam-

This Court is guided by the Supreme Court's instruction that "[c]rafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." Slip. Op. at 9 (citations omitted).

With this framework in mind, the Court turns to Plaintiffs' specific requests for injunctive relief.

II. The Government's Implementation Of The Supreme Court's "Close Familial Relationship" Standard Is Unduly Restrictive

Plaintiffs request that the Court enjoin the Government from implementing EO-2 against grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States. The Supreme Court held that foreign nationals who claim a bona fide relationship with a person in the United States must have a "close familial relationship" in order to be excluded from the effects of EO-2, but the Supreme Court did not comprehensively define that phrase. Slip Op. at 12. The Government, in an effort to provide consular officials and agencies with the necessary guidance to implement the standard

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ple, a party's violation of the Supreme Court's order placing effective limitations on the scope of the district court's preliminary injunction." *Id.* Because Plaintiffs now seek such injunctive relief, the Court reaches the merits of their request, consistent with the Ninth Circuit's guidance. *See id.* ("Plaintiff's motion before the district court was clear: it sought clarification of the Supreme Court's June 26 order, not injunctive relief. Because the district court was not asked to grant injunctive relief or to modify the injunction, we do no fault it for not doing so.").

in a very short window of time, created a list of family relations it claims satisfies the standard. The Government's list includes only parents, parents-in-law, spouses, fiancés, children, adult sons or daughters, sons-in-law, daughters-in-law, siblings (whether whole or half), and step relationships, principally in reliance on certain provisions within the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 *et seq.*, applicable to family-based immigrant visas. *See, e.g.*, 8 U.S.C. §§ 1101(b)(1)-(2); 1151(b)(2); 1153(a); 1184(d).[7]

In its June 26, 2017 decision, the Supreme Court identified illustrative, but not exhaustive, examples of "close familial relationships." A spouse and a mother-in-law "clearly" qualify, but which other relationships meet this standard is less clear. *See* Slip Op. at 12. What is clear from the Supreme Court's decision is that this Court's analysis is to be guided by consideration of whether foreign nationals have a requisite "connection" or "tie" to this country. *See* Slip Op. at 11 (holding that the injunction is not to be enforced against foreign nationals with "no connection to the United States at all," those who "lack[] any connection to this country," and "when there is no tie between the foreign national and the United States."). Put another way, context matters. And when appropriately considered in the

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[7] The Government contends that, to the extent it also relies on INA provisions that govern the "allocation of a numerically-limited number of visas . . . [,] all of these provisions draw lines in the context of determining which familial relationships are close enough to petition for a visa under the INA. That is exactly the type of line-drawing that the Supreme Court's opinion requires." Mem. in Opp'n 5 n.2 (citation omitted).

context of the June 26 order, the Government's narrowly defined list finds no support in the careful language of the Supreme Court or even in the immigration statutes on which the Government relies.

First, the Government's utilization of the specific, family-based visa provisions of the INA identified above constitutes cherry-picking and resulted in a predetermined and unduly restrictive reading of "close familial relationship." Other, equally relevant federal immigration statutes define a close family in a much broader manner. *See, e.g.*, *Reno v. Flores*, 507 U.S. 292, 297, 310 (1993) (including "aunts, uncles, [and] grandparents" as among "close blood relatives") (quoting 8 C.F.R. § 242.24 (1992), recodified at 8 C.F.R. § 236.3(b)(1)(iii)); *see also* Fam. Sponsor Immigration Act of 2002, Pub. L. 107-150, § 2(a) (entitled "Permitting Substitution of Alternative Close Family Sponsor In Case of Death of Petitioner," and amending 8 U.S.C. § 1183a(f) to allow sisters-in-law, brothers-in-law, grandparents, and grandchildren to sponsor aliens for admission).[8]

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[8] Plaintiffs additionally identify other immigration laws that enable an individual to seek admission on behalf of "[g]randchild(ren)" and "[n]iece[s] or nephew[s]," 81 Fed. Reg. 92,266, 92,280 (Dec. 19, 2016); to apply for asylum if a "grandparent, grandchild, aunt, uncle, niece, or nephew" resides in the United States, 69 Fed. Reg. 69,480, 69,488 (Nov. 29, 2004); to apply for naturalization on behalf of a grandchild, 8 U.S.C. § 1433(a); and to qualify as a special immigrant if he is the "grandparent" of a person in the United States, *see* USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 421(b)(3) (2001).

Second, Defendants point to nothing in the Supreme Court's order that supports their truncated reading. In fact, the Supreme Court specifically included a mother-in-law within its definition of "close family" despite the exclusion of mothers-in-law from the statutes relied upon by the Government in crafting its guidance. The Supreme Court was clear that EO-2 may not be enforced against Dr. Elshikh's mother-in-law, not because she is merely the mother of his wife, but because she "clearly has such a [close familial] relationship" with Dr. Elshikh himself. Slip. Op. at 12. Had the Supreme Court intended to protect only immediate family members and parents-in-law, surely it could have said so. It did not.

Indeed, Supreme Court case law drawn from other contexts supports a broader definition of "close familial relationship" than that urged by the Government. *See, e.g.*, *Moore v. City of E. Cleveland*, 431 U.S. 494, 503-04 (1977) (holding that the invalidation of a local housing ordinance was warranted, in part, because the "tradition of uncles, aunts, cousins, and especially grandparents sharing a household with parents and children has roots equally venerable and equally deserving of constitutional recognition"); *Troxel v. Granville*, 530 U.S. 57, 63-65 (2000) (plurality opinion) ("[D]emographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to house-

hold. . . . In many cases, grandparents play an important role.").[9]

In sum, the Government's definition of "close familial relationship" is not only not compelled by the Supreme Court's June 26 decision, but contradicts it. Equally problematic, the Government's definition represents the antithesis of common sense. Common sense, for instance, dictates that close family members be defined to include grandparents. Indeed, grandparents are the *epitome* of close family members. The Government's definition excludes them. That simply cannot be. *See generally Klayman v. Obama*, 142 F. Supp. 3d 172, 188 (D.D.C. 2015) (noting that courts should not "abandon all common sense" when considering injunctive relief).[10]

In light of the careful balancing of the hardships and the equitable considerations mandated by the Supreme Court, the Court finds that Plaintiffs have met their burden of establishing that the specific requested injunctive relief related to EO-2 is necessary to preserve the status quo pending appeal. Plaintiffs' Motion is accord-

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[9] *See also Caldwell v. Brown*, No. C09-1332RSL, 2010 WL 3501839, at *2 (W.D. Wash. Sept. 3, 2010) ("[T]he grandparent-grandchild relationship is entitled to respect and some level of recognition in our society. As the United States Supreme Court has recognized, grandparents often play an 'important role' in the lives of their grandchildren. . . . The question is not whether grandparents are important members of the American family: they are." (quoting *Troxel*, 530 U.S. at 64)).

[10] Although the Government contends that its "reasonable construction" is entitled to deference (*see* Mem. in Opp'n 9), it offers no authority in support of that proposition.

ingly granted with respect to this issue, and the Court will modify the injunction in the manner requested.

III. The Government May Not Exclude Refugees With A Credible Claim Of A Bona Fide Relationship With A Person Or Entity In The United States

Plaintiffs ask the Court to modify the injunction with respect to Sections 6(a) and 6(b) in several respects, each of which is addressed in turn.

A. The Government May Not Exclude Refugees Covered By a Formal Assurance Between The Government And A United States Refugee Resettlement Agency

Plaintiffs seek to prevent the Government from implementing agency guidance that "[t]he fact that a resettlement agency in the United States has provided a formal assurance for a refugee seeking admission . . . is not sufficient in and of itself to establish a qualifying relationship for the refugee with an entity in the United States." Katyal Decl., Ex. B, Dep't of State, *untitled guidance document* (received by Pls. June 29, 2017), ECF No. 329-1. Plaintiffs insist that a formal assurance issued by a resettlement agency satisfies the Supreme Court's bona fide relationship requirement due to the formal nature of the agreement and the extensive obligations it triggers on the part of the voluntary agency or affiliate.

The parties do not dispute that before *any* refugee is admitted to the United States under the USRAP, the Department of State must receive a commitment ("assurance") from a resettlement agency. *See* Mem. in Opp'n to Emergency Mot. to Clarify, Bartlett Decl.

¶¶ 14-19; ECF No. 301-1; *see id.* ¶ 16 ("All refugees receive a sponsorship assurance from a resettlement agency before they travel to the United States."). Once a particular refugee has been approved by the Department of Homeland Security and provides a satisfactory medical evaluation, the refugee is assigned to one of several Government-contracted resettlement agencies, which then submits an assurance agreeing to provide basic, required services if and when the refugee arrives in the United States. Bartlett Decl. ¶¶ 19-21, ECF No. 301-1. The Government quarrels with the effect of such an assurance. According to the Government, because the assurance is an agreement between the State Department and a resettlement agency, not an agreement between a resettlement agency and the refugee who benefits from the assurance, the assurance cannot evidence the type of bona fide relationship contemplated by the Supreme Court. Mem. in Opp'n 11. The Court disagrees.

Nothing in the Supreme Court's decision requires a refugee to enter into a contract with a United States entity in order to demonstrate the type of formal relationship necessary to avoid the effects of EO-2. An assurance from a United States refugee resettlement agency, in fact, meets each of the Supreme Court's touchstones: it is formal, it is a documented contract, it is binding, it triggers responsibilities and obligations, including compensation, it is issued specific to an individual refugee only when that refugee has been approved for entry by the Department of Homeland Security, and it is issued in the ordinary course, and historically has been for decades. *See* Slip Op. at 12. Bona fide

does not get any more bona fide than that.[11] Accordingly, Plaintiffs' Motion is granted with respect to this specific request for injunctive relief.[12]

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[11] Even if the Government is correct that the resettlement agency providing an assurance typically does not have "direct contact" with the refugee prior to his or her arrival, no such "direct contact" is required anywhere in the Supreme Court's decision. Moreover, the resettlement agency's binding commitments arise when the agency provides a formal sponsorship assurance. *See* Bartlett Decl. ¶¶ 20-21, ECF No. 301-1; *see also* Suppl. Hetfield Decl. ¶¶ 4-5, ECF No. 336-3. The resettlement agency suffers a "concrete injury" in the form of lost resources when resettlement is thwarted by the very Government that approved that refugee's admission. *See Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 729, 731-732 (S.D. Ind.), *aff'd* 838 F.3d 902 (7th Cir. 2016); *see also Exodus Refugee Immigration, Inc. v. Pence*, No. 1:15-cv-01858-TWP-DKL, 2016 WL 1222265, at *5 (S.D. Ind. Mar. 29, 2016) (denying stay pending appeal pursuant to Rule 62(c), based, in part, on finding that the "State's conduct harms [the resettlement agency by] requir[ing] it to shift its resources to make up for the funding it will lose, [which] will have a detrimental effect on its Syrian and non-Syrian clients' resettlement and transition to life in the United States"), *aff'd* 838 F.3d 902 (7th Cir. 2016). A relationship that results in such concrete hardship to a United States entity is precisely the circumstance that the Supreme Court has found to be deserving of exclusion from the effects of EO-2. *See* Slip Op. at 13.

[12] Plaintiffs complain of travel procedures and booking dates that they assert the Government is using to flout this Court's injunction. *See, e.g.*, Suppl. Hetfield Decl. ¶¶ 4-5 & Ex. A (E-mail from Lawrence E. Bartlett, to Voluntary Agencies (July 8, 2017, 8:05 EDT)), ECF No. 336-3. As best the Court can discern, regardless of the booking date involved, these complaints all relate to refugees with formal assurances, who the Court has now determined have the requisite bona fide relationship contemplated by the Supreme Court, and who are therefore excluded from the application of EO-2. No further relief covering these refugees appears to be

B. No Modification With Respect To Legal Services Organizations Is Warranted

Plaintiffs request that the Court modify its injunction to specify that the Government is prohibited from applying Sections 6(a) and 6(b) to exclude refugees who have a bona fide client relationship with a United States legal services organization.

The Government previously noted that there currently is no applicable guidance regarding the treatment of legal services providers because the nature of such representational services varies significantly. *See* Mem. in Opp'n to Emergency Mot. to Clarify Prelim Inj. 20-21, ECF No. 301. The Court agrees. Plaintiffs, for instance, advocate that foreign nationals consulting abroad with "affiliates" of American legal services providers regarding United States immigration law qualify as having a credible claim of a bona fide relationship with a person or entity in the United States. That conclusion, while conceivable, appears to be nearly impossible to reach absent additional facts, such as with respect to the nature of the consultation and affiliation. A categorical exemption of the sort requested would run afoul of the Supreme Court's order, which provides at least one example of when such a legal services client relationship would not be protected. *See* Slip Op. at 12.

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necessary, and the Court denies any such request as moot. If this ruling and the related injunction modifications set forth in this Order do not resolve or do not address Plaintiffs' travel procedure concerns, an application offering further detail may be filed.

Accordingly, to the extent Plaintiffs seek injunctive relief on behalf of IRAP and similar legal services providers, they fail to meet their burden, and the Court declines to issue the categorical modification sought.

C. Categorical Modifications Relating To U.S.-Affiliated Iraqis, The Central American Minors Program, And The Lautenberg Program

Plaintiffs, joined by amici IRAP and HIAS, ask that the Court enforce or modify the injunction due to the Government's alleged refusal to recognize particular refugees who have the requisite relationship to a United States entity or close family member contemplated by the Supreme Court. More specifically, Plaintiffs seek relief on behalf of refugees who accessed the USRAP through the Iraqi Direct Access Program for U.S.-Affiliated Iraqis, the Central American Minors Program, and the Lautenberg Program. *See* Br. of IRAP *et al.* as Amici Curiae in Supp. of Pls.' Mot. 10-13, ECF No. 339.

1. Direct Access Program For U.S.-Affiliated Iraqis

Plaintiffs contend that refugee applicants in the Iraqi Direct Access Program for U.S.-Affiliated Iraqis are categorically exempt from Sections 6(a) and 6(b) because they necessarily have the requisite bona fide relationship with a United States person or entity. *See* Mem. in Supp. of Mot. 15 n.6; *see also* Br. of IRAP *et al.* as Amici Curiae in Supp. of Pls.' Mot. 11-12; Allen Decl. ¶¶ 17-24, ECF No. 336-5 (describing mechanics and goals of program). Under the program, Iraqis who believe they are at risk or have experienced seri-

ous harm as a result of associating with the United States Government since March 20, 2003 may apply directly for resettlement as refugees in the United States, upon "verifiable proof of U.S.-affiliated employment." *See* Dep't of State, Bureau of Population, Refugees, & Migration, *Fact Sheet: U.S. Refugee Admissions Program (USRAP) Direct Access Program for U.S.-Affiliated Iraqis* (Mar. 11, 2016), *available at* https://www.state.gov/j/prm/releases/factsheets/2016/254650.htm ("The following individuals and their derivatives (spouse and unmarried children under age 21), with verifiable proof of U.S.-affiliated employment, may seek access through this program: 1. Iraqis who work/worked on a full-time basis as interpreters/translators for the U.S. Government (USG) or Multi-National Forces (MNF-I) in Iraq; 2. Iraqis who are/were employed by the USG in Iraq[.]"). Program applicants need not be current employees of the United States or a United States-affiliated entity.

The Government opposes this request because the "Iraqi Direct Access Program includes certain non-qualifying relationships with the U.S. Government itself, as well as past (not current) relationships." Mem. in Opp'n 15 n.6. The Court concurs. Although U.S.-Affiliated Iraqis with verifiable past employment relationships with United States entities may qualify for participation in the program, these applicants are not necessarily exempt from EO-2. The Supreme Court's guidance, as it relates to Section 6, clearly contemplates relationships that are current and existing. That does not necessarily follow with respect to certain Iraqi Direct Access Program applicants.

Accordingly, on the record before the Court, categorical relief is not appropriate, and Plaintiffs' Motion is denied with respect to the Iraqi Direct Access Program for U.S.-Affiliated Iraqis.

2. Central American Minors Program

The Central American Minors ("CAM") program "protects Central Americans at risk by allowing lawfully present parents in the United States to request refugee status for their children in El Salvador, Honduras, and Guatemala via the U.S. Refugee Admissions Program." *See* Dep't of State, *Cent. Am. Minors Program* (Nov. 2014), *available at* https://www.state.gov/j/prm/ra/cam/index.htm. The Government argues that because the program also allows "caregivers" who are merely "related to" the in-country parent or qualifying child to apply to the program, these participants do not necessarily have a sufficiently close relationship to a United States-based parent to qualify as a "close family member." *See* Mem in Opp'n 15 n.6; *see also* Dep't of State, *Worldwide Refugee Admissions Processing System (WRAPS), CAM Frequently Asked Questions* (Nov. 2016), *available at* https://www.wrapsnet.org/s/CAM-Frequently-Asked-Questions-November-2016.docx.

While it appears that most of those eligible to participate in the program (*e.g.*, minors with parents lawfully in the United States) would fall within those excluded from EO-2, that is not categorically true for all of those in the program. Because caregivers need not have the requisite "close familial relationship" to the in-country parent, program-wide relief is not appropriate. Consequently, Plaintiffs' Motion is denied with respect to

refugees who are in the USRAP through the CAM Program.

3. Lautenberg Program

The Lautenberg Program permits certain nationals of the former Soviet Union and other countries with "close family in the United States" to apply for refugee status. *See* Dep't of State, *Proposed Refugee Admissions for Fiscal Year 2017* (Sept. 15, 2016), *available at* https://www.state.gov/j/prm/releases/docsforcongress/261956.htm ("This Priority 2 designation applies to Jews, Evangelical Christians, and Ukrainian Catholic and Orthodox religious adherents identified in the Lautenberg Amendment, Public Law No. 101-167, § 599D, 103 Stat. 1261 (1989) (codified at 8 U.S.C. § 1157) as amended ('Lautenberg Amendment'), with close family in the United States.").

The Government opposes Plaintiffs' request for categorical relief with respect to the Lautenberg Program solely because the program includes grandparents and grandchildren as "close family." *See* Mem. in Opp'n 15 n.6 ("The Lautenberg Program . . . includes grandparents and grandchildren in the family relationship criteria for applicants."); *see also* Suppl. Hetfield Decl. ¶ 6, ECF No. 336-3. In light of the Court's determination that grandparents and grandchildren are within the penumbra of "close family" for purposes of the Supreme Court's June 26 decision, the Court rejects the Government's position with respect to the Lautenberg Program. That is, because all participants admitted through the Lautenberg Program, including grandparents and grandchildren, *must* have a "close familial relationship" as that term is used in

the Supreme Court's stay order, the categorical relief requested by Plaintiffs is appropriate. As a result, Plaintiffs' Motion is granted with respect to refugees who are in the USRAP through the Lautenberg Program.

IV. No Modification Is Warranted With Respect To The Government's Alleged Use Of A "Presumption"

In their Motion, Plaintiffs request modification of the injunction to prevent the Government from applying a so-called presumption that an applicant lacks the requisite bona fide relationship identified by the Supreme Court. However, Plaintiffs present no substantive argument or authority in support of their request. *See* Mot. 2, ECF No. 328; Mem. in Supp. of Mot., ECF No. 328-1. In fact, even in the face of the Government's opposition, which correctly noted that Plaintiffs appear to have abandoned their presumption contention (*see* Mem. in Opp'n 2 n.1), Plaintiffs' reply brief remained silent (*see generally* Reply, ECF No. 342).

The Court accordingly finds that Plaintiffs have abandoned their presumption argument, notwithstanding the relief sought in their proposed orders. Because Plaintiffs present no discussion or authority in support of this request, there is no basis to award the injunctive relief sought, and the Motion is denied.

CONCLUSION

Based on the foregoing, Plaintiffs' Motion is GRANTED IN PART and DENIED IN PART. The Court declines to stay this ruling or hold it in abeyance should an emergency appeal of this order be filed.

The Court MODIFIES the preliminary injunction entered on March 29, 2017, amended on June 19, 2017, and partially stayed by a June 26, 2017 decision of the United States Supreme Court, to provide as follows:

PRELIMINARY INJUNCTION

It is hereby ADJUDGED, ORDERED, and DECREED that:

Defendants JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; and all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them, are hereby enjoined from enforcing or implementing Sections 2 and 6 of Executive Order No. 13,780 across the Nation—except for those portions of Sections 2 and 6 providing for internal review procedures that do not burden individuals outside of the executive branch of the federal government. Enforcement of the enjoined provisions in all places, including the United States, at all United States borders and ports of entry, and in the issuance of visas is prohibited, pending further orders from this Court.

Defendants JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; and

all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them are enjoined fully from the following:

1. Applying section 2(c), 6(a) and 6(b) of Executive Order 13,780 to exclude grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States.

2. Applying Section 6(a) and 6(b) of Executive Order 13,780 to exclude refugees who: (i) have a formal assurance from an agency within the United States that the agency will provide, or ensure the provision of, reception and placement services to that refugee; or (ii) are in the U.S. Refugee Admissions Program through the Lautenberg Program.

IT IS SO ORDERED.

Dated: July 13, 2017 at Honolulu, Hawai'i.

[SEAL]

/s/ DERRICK K. WATSON
DERRICK K. WATSON
United States District Judge

State of Hawaii, et al. v. Trump, et al.; Civil No. 17-00050 DKW-KSC; **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO ENFORCE, OR, IN THE ALTERNATIVE, TO MODIFY PRELIMINARY INJUNCTION**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF ISMAIL ELSHIKH, PhD

DECLARATION OF ISMAIL ELSHIKH, PhD

I, Ismail Elshikh, PhD declare the following:

1. I am an American citizen of Egyptian descent, and a resident of Hawai'i. I have been a resident of Hawai'i for over a decade. My wife, Dana, who is of Syrian descent, and my five children are also American citizens and residents of Hawai'i. I am proud to be an American citizen, and consider the United States to be my home country. Because of my allegiance to America, and my deep belief in the American ideals of democracy and equality, I am deeply saddened by the passage of the Executive Order barring nationals from

now-six Muslim majority countries from entering the United States.

2. I am the Imam of the Muslim Association of Hawai'i. As Imam, I am a leader within the local Hawai'i Islamic community. I believe strongly in the First Amendment, religious equality, and that individuals of different faiths should be allowed to exercise their religious beliefs, free from government suppression, and in a way that does not harm others. The members of my Mosque consider Hawai'i to be home. They are integrated into local society and culture. They have friends and family within and outside of the local Islamic community.

3. My five children are 12, 10, 8, 5 and almost 2 years of age. They have all been United States citizens, and Hawai'i residents, since birth. All of my children were born at Kaiser Hospital in Honolulu, Hawai'i. My older children attend school in Honolulu, and they have many friends from all walks of life. They are aware of both President Trump's initial travel ban and of his modified travel ban issued Monday, March 6 and are deeply saddened by the message that both convey—that a broad travel-ban is "needed" to prevent people from certain Muslim countries from entering the United States. They are deeply affected by the knowledge that the United States—their own country—would discriminate against individuals who are of the same ethnicity as them, including members of their own family, and who hold the same religious beliefs. They do not fully understand why this is happening, but they feel hurt, confused, and sad. When my children go to school and see other kids with their

grandparents, they ask me: "Dad, how come we can't have our grandmother like our friends; is it because we are Muslims?"

4. The revised travel ban will have a direct personal effect on me, my wife, and my children because it creates an obstacle to the ability of my mother-in-law (and my children's grandmother) to visit them in Hawai'i. My wife's mother is a Syrian national, living in Syria, with a Syrian travel document. She has been making concrete plans to visit my family for many years. It is not easy for Syrian citizens or residents, like my wife's mother, to obtain visitor travel documentation from the American government permitting entry into the United States. My wife filed an I-130 Petition for Alien Relative, on behalf of her mother, with the United States government in September 2015. The Petition was approved in February 2016, and my wife's mother was eagerly anticipating the completion of the rest of her visa application process. On January 31, 2017—days after President Trump signed the first Executive Order putting in place the original travel ban—I called the National Visa Center to inquire as to whether the Executive Order would impact my mother-in-law's visa application. I was told that it would; namely that as a result of the Executive Order, her application for an immigrant visa was now on hold and would not proceed to the next stage in the process. On February 3, 2017, the District Court for the District of Washington temporarily enjoined the enforcement of the travel ban, and the Ninth Circuit denied the Government's application for a stay. On March 2, 2017, we received an email from the National Visa Center informing us that

my mother-in-law's visa application was now in fact proceeding to the next stage of the process, and her interview would be scheduled at an embassy overseas. No date was set, but the letter stated that most interviews are set within three months. On March 6, 2017, the President signed the new travel ban. From what I understand, this will put us exactly back in the position we were in on January 31—her application will now be put on hold, indefinitely.

5. My mother-in-law has been looking forward to visiting my family for years. She last visited Hawai'i in 2005, when she stayed for one month. She has not yet met two of my five children. Only my oldest child remembers meeting her grandmother.

6. President Trump's issuance of the new Executive Order banning Syrian nationals from entering the United States has directly impacted my family by complicating, once again, my mother-in-law's ability to visit Hawai'i to see, spend time with, and get to know her grandchildren. This is devastating to me, my wife and children. I believe that it is also devastating to my mother-in-law.

7. As an Imam, I work with many members of the Hawai'i Islamic community. Many members of my Mosque are upset about the revised travel ban, and some are very fearful. All feel that the travel ban targets Muslim citizens because of their religious views and national origin. The travel ban has a very real and direct impact upon their lives. Although many members of my Mosque consider Hawai'i to be home, many have family and friends still living in the countries affected by the revised travel ban. While the

travel ban remains in effect, these individuals live in forced separation from those family members and friends.

8. I personally know of more than 20 individuals who are members of my community and mosque, who have immediate relatives in the six designated countries under the new Executive Order. These persons will now be unable to receive visits from their relatives —including spouses, parents, and children.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Honolulu, Hawai'i, Mar. 8, 2017.

/s/ ISMAIL ELSHIKH, PhD
ISMAIL ELSHIKH, PHD

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

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STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

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SUPPLEMENTAL DECLARATION OF GEORGE SZIGETI

SUPPLEMENTAL DECLARATION OF GEORGE SZIGETI

I, GEORGE SZIGETI do declare and would competently testify as follows.

1. I am the President and Chief Executive Officer of the Hawaii Tourism Authority (HTA). I have served in this role since May 2015. From 2012 to 2015, I was the President and CEO of the Hawaii Lodging and Tourism Association, a private organization of Hawaii tourism industry leaders, which represents over 700 lodging properties and businesses across the State.

2. The HTA was established in 1998 as the lead state agency for Hawaii's tourism industry. The HTA is the state agency charged with the research, development, and fostering of tourism in Hawai'i. HTA's mission is to strategically manage Hawai'i tourism in a sustainable manner consistent with economic goals, cultural values, preservation of natural resources, community desires, and visitor industry needs.

3. This declaration supplements the information in my earlier declaration, dated February 2, 2017.

4. HTA maintains data regarding visitor arrivals and total visitor spending for various regions around the world.

5. The data maintained by our agency shows that 278 visitors arrived from the Middle East in January 2017. This is a decrease from 348 visitors from the same region in January 2016. The January 2017 data is estimated at present.

6. As our data is maintained, the region Middle East includes Iran, Syria, and Yemen.

7. The data maintained by our agency also shows that 89 visitors arrived from Africa during January 2017. This is a decrease from 141 visitors who arrived from Africa in January 2016. The January 2017 data is estimated at present.

8. As our data is maintained, the region Africa includes Libya, Somalia, and Sudan.

9. HTA also maintains data about the reasons why visitors come to Hawaii, such as vacation, business, or to visit family and friends.

10. Our data shows that in 2016, Hawai'i hosted more than 8.8 million visitors by air. Of these over 8.8 million visitors, approximately 5.4 million visitors came from elsewhere in the United States; 1.5 million came from Japan; 478,000 came from Canada; 443,000 came from other Asian countries; 399,000 came from Oceania (including Australia and New Zealand); 142,000 came from Europe; 26,000 came from Latin America; and another 325,000 came from the rest of the world (including the Middle East and Africa).

11. Of the 8.8 million total visitors who came to Hawai'i in 2016, 8.2% of them (more than 720,000) came to visit family and friends here. Of the 325,000 visitors who came to Hawai'i in 2016 from the areas of the globe that include the Middle East and Africa, 12.3% of them (nearly 40,000) came to visit family and friends here.

12. Our data shows that in 2015, Hawai'i hosted more than 8.5 million visitors by air. Of these over 8.5 million visitors, approximately 5.3 million visitors came from elsewhere in the United States; 1.5 million came from Japan; 512,000 came from Canada; 393,000 came from other Asian countries; 399,000 came from Oceania (including Australia and New Zealand); 145,000 came from Europe; 28,000 came from Latin America; and another 290,000 came from the rest of the world (including the Middle East and Africa).

13. Of the 8.5 million visitors who came to Hawai'i in 2015, 8.4% of them (more than 717,000) came to visit family and friends here. Of the 290,000 visitors who came from the areas of the globe that include the Middle East and Africa, 11.9% of them (around 34,000) came to visit family and friends here.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4th of Mar., 2017, in Honolulu, Hawai'i.

/s/ GEORGE SZIGETI
GEORGE SZIGETI

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

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STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

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1. I am the President and Chief Executive Officer of the Hawaii Tourism Authority (HTA). I have served in this role since May 2015. From 2012 to 2015, I was the President and CEO of the Hawaii Lodging and Tourism Association, a private organization of Hawaii tourism industry leaders, which represents over 700 lodging properties and businesses across the State.

2. The HTA was established in 1998 as the lead state agency for Hawaii's tourism industry. The HTA is the state agency charged with the research, development, and fostering of tourism in Hawai'i. HTA's mission is to strategically manage Hawai'i tourism in a sustainable manner consistent with economic goals, cultural values, preservation of natural resources, community desires, and visitor industry needs.

3. The Tourism Special Fund was also established in 1998. It is a set percentage of the transient accommodations tax collections that is assessed on hotels, vacation rentals, and other accommodations. It is used by the HTA to market, develop, and support Hawaii's tourism economy.

4. Among its responsibilities, HTA is charged with:

    a. setting tourism policy and direction from a statewide perspective;

    b. developing and implementing the State's tourism marketing plan and efforts;

    c. supporting programs and initiatives that enhance and showcase Hawaii's diverse peoples, places, and cultures of the islands, in order to deliver an incomparable visitor experience, including supporting Native Hawaiian culture and community, signature events and festivals, and preservation and proper use of Hawaii's striking natural resources;

d. managing programs and activities to sustain a healthy tourism industry for the State;

e. coordinating tourism-related research, planning, promotional and outreach activities with the public and private sectors; and

f. encouraging distribution of visitors across all of the Hawaiian Islands to balance capacity.

5. HTA maintains data regarding visitor arrivals and total visitor spending for various regions around the world

6. The data maintained by our agency shows the following for the last five years:

	2012	2013	2014	2015	2016
Total Visitor Expenditures (in Million $)	$14,364.8	$14,520.5	$14,973.3	$15,110.9	$15,745.7
Total arrivals (by air and cruise ships)	8,028,743	8,174,461	8,320,785	8,679,564	8,941,394
Arrivals by Air	7,867,143	8,003,474	8,196,342	8,563,018	8,832,598
Arrivals by cruise ship	161,600	170,987	124,443	116,546	108,796

The total visitor expenditures reported in this chart from 2012-2015 includes supplemental business expenditures. For 2016, the data is

preliminary and the supplemental business expenditures have been estimated.

7. To translate, Hawaii's tourism industry brought well over $14 billion into the State during 2012 to 2014. In 2015 and 2016, it brought in over $15 billion. Tourism is the leading economic driver in the State.

8. As this data shows, airline travel is far and away the preferred method to travel to Hawai'i. In 2016, for example, a total of 8,941,394 people arrived in the islands. Only 108,796 of this total (1.2%) arrived by cruise ship.

9. Our data also shows that there is a steady flow of visitors from the Middle East and Africa. The data maintained by our agency shows the following for the last five years:

Visitor Arrivals	2012	2013	2014	2015	2016
Middle East	3,565	3,182	5,784	6,804	5,451
Africa	1,345	1,111	1,877	2,090	1,725

This data reflects visitor arrivals, in surveys taken for air arrivals. The 2016 data is preliminary.

10. As our data is maintained, the region Middle East includes Iran, Iraq, Syria, and Yemen.

11. As our data is maintained, the region Africa includes Libya, Somalia, and Sudan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2 of Feb., 2017, in Honolulu, Hawaii.

/s/ GEORGE SZIGETI
GEORGE SZIGETI

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

SUPPLEMENTAL DECLARATION OF
LUIS P. SALAVERIA

SUPPLEMENTAL DECLARATION OF
LUIS P. SALAVERIA

I, LUIS P. SALAVERIA, do declare and would competently testify as follows.

1. I am the Director of the State of Hawaii Department of Business, Economic Development and Tourism (DBEDT). I have held this position since December 2014. Prior to this position, I served as the State's Deputy Director of Finance from 2011 to 2014.

2. As Director, I lead DBEDT's efforts to achieve a Hawaii economi that embraces innovation and is globally competitive and dynamic, providing opportunities for all Hawaii's citizens.

3. Through our attached agencies, we also foster planned community development, create affordable workforce housing units in high-quality living environments, and promote innovative job growth.

4. This declaration supplements the declaration I submitted to this Court earlier, dated February 2, 2017. In that declaration, I offered my observations about the potential impact President Trump's executive order, issued January 27, 2017, could have on Hawaii's economy, including our tourism industry. It is my understanding that this original executive order temporarily banned travel from seven Muslim-majority countries.

5. I am aware that on March 6, 2017, President Trump issued a new executive order. This order temporarily bans travel from six Muslim-majority countries, and does not apply to legal permanent residents or other designated, limited, and narrow categories of non-citizens.

6. The observations I made regarding the potential impact the first executive order could have on Hawaii apply just as much to the new executive order. Hawaii's financial and business interests in its tourist economy; Hawaii's well-earned reputation and brand as a place of wel-

come, inclusivity, and tolerance; and Hawaii's efforts to position itself as a hub of international business are all threatened by the new executive order in the same manner as they were by the first order.

7. I am also aware that the new executive order was issued after weeks of speculation and uncertainty, after the federal government represented on February 16, 2017 that a new order would be issued in the near future. The shifting and uncertain nature of federal policies regarding travel to the United States itself poses a problem for Hawaii.

8. I am aware that the new executive order expands the President's directive to the Department of Homeland Security to conduct a "worldwide review" about what information may be needed from "each foreign country" to determine whether nationals from that country should be granted a visa or otherwise admitted to the United States. I am aware that the executive order envisions a report from the Department of Homeland Security twenty days after the effective date of the order, with an indication of what additional information may be necessary from each country. This has the potential to introduce further uncertainty into planned and future international travel to the United States.

9. Hawaii has millions of visitors annually from all over the world. I expect, given the uncertainty the new executive order and its predecessor have caused to international travel generally,

that these changing policies may depress tourism, business travel, and financial investments in Hawaii.

10. Many of our visitors are tourists who travel here for vacation. Uncertainty regarding the future of federal policies impacting air travel may discourage visitors from undertaking the advance planning typically involved with a Hawaiian vacation. It may also cause would-be visitors to choose other destinations where such uncertainty is not an issue.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6th of Mar., 2017, in Honolulu, Hawaii.

/s/ LUIS P. SALAVERIA
LUIS P. SALAVERIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

ORIGINAL DECLARATION OF LUIS P. SALAVERIA

DECLARATION OF LUIS P. SALAVERIA

I, LUIS P. SALAVERIA, do declare and would competently testify as follows.

1. I am the Director of the State of Hawaii Department of Business, Economic Development and Tourism (DBEDT). I have held this position since December 2014. Prior to this position, I served as the State's Deputy Director of Finance from 2011 to 2014.

2. As Director, I lead DBEDT's efforts to achieve a Hawaii economy that embraces innovation

and is globally competitive and dynamic, providing opportunities for all Hawaii's citizens.

3. Through our attached agencies, we also foster planned community development, create affordable workforce housing units in high-quality living environments, and promote innovative sector job growth.

4. In my professional experience working for and promoting Hawaii, the ability for government and business leaders to travel to each other's respective countries is critical to maintaining Hawaii's tourism economy and to expand our local economy's potential beyond tourism.

5. The networking and trust-building that occurs as a result of travel is not something that can be replicated through phone calls, emails, or video-conferences. Meaningful relationships between government agencies, private businesses, and community organizations is best accomplished through direct interaction and face-to-face engagements.

6. I have recently traveled to Japan, Korea, and the Philippines to explore opportunities for collaborative engagements in renewable energy and to discuss Hawaii's renewable energy laws.

7. As a result of my trip to the Philippines, a delegation from that country came to Hawaii to participate in our annual Clean Energy Summit. They also participated in one of our business start-up accelerator programs and invested funds into the program. This outcome would

not have been possible if not for the willingness of these individuals to travel to Hawaii.

8. The State of Hawaii maintains a number of sister-state relationships with countries throughout world. Countries such as China, Indonesia, Japan, Philippines, and Taiwan are partners to Hawaii in this global economy, and these relationships are integral to maintaining Hawaii's position as a global destination and place of business. The ability to interact with these countries without concern of impeded travel by individuals from those countries is crucial to these relationships.

9. Through news coverage and through conversations with others in state government, I am aware of Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry Into the United States," which was issued by President Donald Trump on January 27, 2017. It is my understanding that the Executive Order temporarily bars entry into the United States of any person who is a citizen of any one of six countries: Iraq, Iran, Somalia, Sudan, Libya and Yemen. It is my understanding that the Executive Order indefinitely bars entry into the United States of any person who is a citizen of Syria. It is my understanding that this bar to travel to the United States applies regardless of whether the person in question poses a specific threat of violence or any connection to terrorist activities in any way.

10. I am also aware that a great deal of confusion and inconsistent implementation occurred as the Executive Order was placed into effect nationwide. I am generally aware of the news coverage regarding the Executive Order and how its impact is being felt around the world and here in Hawaii.

11. Based on my professional experience it is my opinion that this Executive Order has the potential to inhibit and impair Hawaii's relationships with foreign countries. Hawaii has millions of visitors annually from all over the world. I expect, given the instability it has caused to international travel generally, that this Executive Order may depress tourism, business travel, and financial investments in Hawaii. It is also my opinion that the confusion and difficulties brought about by the Executive Order may result in visitors who would choose to visit Hawaii to instead look at other destinations where travel will not be impeded.

12. In my experience as DBEDT director, Hawaii has always been viewed as a place of acceptance, hospitality, and cultural diversity. Any potential action that could jeopardize that reputation has the ability to do irreparable harm to our State's brand. For many of our visitors, Hawaii is a vacation destination, and people generally take vacations to places where they feel welcome, invited, and safe.

13. In addition to being a tourist destination, Hawaii has been positioning itself for many years as a

hub of international business, located midway between Asia and the continental United States. In my time in state government I have witnessed and been part of efforts to attract business and financial investments to Hawaii by emphasizing our inclusiveness and diversity. I believe that the Executive Order causes harm to this reputation and may negatively impact Hawaii's ability to attract future investments from countries that are not currently named in the Executive Order.

14. In my professional travel experience working to expand Hawaii's businesses, I have learned how important it is that Hawaii maintain its reputation as a place of inclusivity and welcome. I believe the Executive Order threatens this reputation.

15. There is no recent parallel to this situation and the Executive Order was recently issued. At this point, it is difficult to determine with precision how its effects will play out for Hawaii's air travelers. Hawaii is uniquely positioned geographically, in the middle of the Pacific Ocean. For the vast majority of our visitors, flying is the only way to travel here. Given the confusion, controversy, and shifting instructions from the federal government regarding the Executive Order, travelers may consider the current situation as a reason for not undertaking travel to Hawaii.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2nd of Febr., 2017, in Honolulu, Hawaii.

/s/ LUIS P. SALAVERIA
LUIS P. SALAVERIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

SUPPLEMENTAL DECLARATION OF
RISA E. DICKSON

SUPPLEMENTAL DECLARATION OF RISA E. DICKSON

I, Risa E. Dickson, do declare and would competently testify as follows.

1. I am Vice President for Academic Planning and Policy, at the University of Hawai'i System. I began this role in February 2015. Previously, I worked at California State University, San Bernardino from 1991-2014. Among the positions I held there included Associate Provost for Academic Personnel. As Associate Prov-

ost, my office processed and monitored visa for international faculty.

2. As Vice President I have overall responsibility for leadership, planning, and intercampus coordination of academic affairs, student affairs, academic policy and planning, institutional research and analysis, international and strategic initiatives, and the Hawai'i P-20 Partnerships for Education. Given my current role with international and strategic initiatives, and my previous experience with recruitment of international faculty, I am well aware of the importance of the role of international faculty in the vibrancy of a healthy university.

3. This declaration supplements the declaration I previously filed with this court, dated February 1, 2017.

4. I am aware that President Trump issued an executive order on January 27, 2017, which temporarily banned travel from seven Muslim-majority countries. I am also aware that on March 6, 2017, President Trump issued a new executive order. This order temporarily bans travel from six Muslim-majority countries, and does not apply to legal permanent residents or other designated, limited, and narrow categories of non-citizens.

5. Despite these changes, many of the impacts of the new executive order will be the same on the University community as were caused by the old executive order. The new executive order

threatens the University's status as an international institution. As with all institutions of higher learning, the scholarship and community of the University rely upon the collaborative exchanges of ideas and research partnerships. The University relies upon faculty, teaching, research, conferences, and program activities that regularly require travel outside the United States. The new executive order will undermine the University's ability to fully engage in the international exchange of ideas and research partnerships. Affected individuals will be understandably reluctant to travel when their ability to return to Hawaii is uncertain. This uncertainty threatens the University's programs, which regularly require travel outside the United States.

6. The new executive order will also hinder the diversity of thought and experience that forms the backbone of any institution of higher education. A diverse student body is part of the educational experience for all students. Given my experience in higher education, I expect that the new executive order will deter students, scholars and faculty from attending our institution. Our experience with higher education indicates that the new executive order will have not just the direct impacts described here, but will likely deter students, scholars and faculty from *other* countries and communities from attending our institutions.

7. The executive order will directly impact the University of Hawai'i. The University presently has approximately 23 graduate students from the six countries included in the new Executive Order. These students attend our institution under valid visas issued by the United States government. They study and work alongside the University's many thousands of other students. The University also has employees including faculty from two of the designated countries, namely Iran and Sudan, who are here on immigrant visas. In addition, the University has at least 29 visiting faculty members and scholars with valid visas from the six countries affected by the new Executive Order. Given the new Executive Order, the University's ability to recruit and enroll students and graduate students, and recruit and hire visiting faculty from the six affected countries, is constrained. Were it not for the new Executive Order, I would expect these activities to take place both in the coming school year and in the near future.

8. Though it is too soon to determine the full impact of the new executive order and its predecessor on the University's future recruitment efforts, we are anticipating that recruitment for undergraduate students, graduate students, permanent faculty members, or visiting faculty members or scholars from the six affected countries may be impacted. Individuals who are neither legal permanent residents nor cur-

rent visa holders will be entirely precluded from considering our institution. This sort of recruitment of students, graduate students, scholars, and faculty—including those from the six designated countries—is important to the diversity of thought and ideas on campus, which the University seeks to foster. As outlined above, the University currently has a number of professors, scholars, and students from the affected countries, and an active program in Persian Language, Linguistics, and Culture. We will be unable to foster further growth in this population because the new executive order will prevent scholars or professors from those countries from considering employment in the United States and at the University of Hawai'i. This may directly impact the University of Hawai'i's ability to recruit and accept the most qualified students and faculty.

9. In addition, we are concerned that the environment caused by these federal orders might dissuade some of our current professors or scholars from continuing their scholarship in the United States and at our institution.

10. In observing the shifting federal policies on immigration from these countries, we stand by our previously stated concern that the new executive order will hinder the free flow of information and ideas, as did its predecessor.

11. As with the State of Hawai'i generally, the University of Hawai'i prides itself on a reputation of inclusiveness, tolerance, and diversity.

The new executive order threatens this reputation, and our ability to fully embrace our priority as a global university and one of the most diverse institutions of higher education.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Mar. 8, 2017, in Honolulu, Hawai'i.

/s/ RISA E. DICKSON
RISA E. DICKSON

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

ORIGINAL DECLARATION OF RISA E. DICKSON

I, Risa E. Dickson, do declare and would competently testify as follows.

1. I am Vice President for Academic Planning and Policy, at the University of Hawai'i system. I began this role in February 2015. Previously, I worked at California State University, San Bernardino from 1991-2014. Among the positions I held there included Associate Provost for Academic Personnel. As Associate Provost, my office processed and monitored visa for international faculty.

2. As Vice President I have overall responsibility for leadership, planning, and intercampus coordination of academic affairs, student affairs,

policy and planning, institutional research and analysis, international and strategic initiatives, and the Hawai'i P-20 Partnerships for Education. Given my current role with international and strategic initiatives, and my previous experience with recruitment of international faculty, I am well aware of the importance of the role of international faculty in the vibrancy of a healthy university.

3. The University of Hawai'i system was founded in 1907 and includes three universities, seven community colleges, and community-based learning centers across six of the Hawaiian Islands.

4. The University is a leading engine for economic growth and diversification in Hawai'i. The University stimulates the local economy with jobs, research, and skilled workers.

5. The University is a unique and important institution in our island State, and in our nation. Because of Hawai'i's unique geographic location, the University is able to offer unique research and employment opportunities in the fields of astronomy and oceanography.

6. Hawai'i's location in the Pacific Ocean, balanced between east and west, creates opportunities for international leadership and collaboration.

7. The University is an international institution. This is reflected in our diverse faculty, which includes approximately four hundred and seventy-seven international faculty members legally present in the United States. Throughout the

University system, we have study abroad or exchange programs in thirty-three different countries. Throughout the University system, we have 489 separate international agreements with 353 institutions in forty different countries, providing opportunities for learning and collaboration for our faculty and scholars.

8. The University has been apprised of the Executive Order entitled, "Protecting the Nation from Foreign Terrorist Entry Into the United States," which was issued by President Donald Trump on January 27, 2017. I have been informed that the Executive Order temporarily bars entry into the United States of any person who is a citizen of any one of seven countries: Syria, Iraq, Iran, Somalia, Sudan, Libya and Yemen. I have also been informed that this bar to travel to the United States applies regardless of whether the person in question poses any individualized threat of violence or any connection to terrorist activities in any way.

9. This Executive Order directly impacts the University of Hawai'i community. The University presently has approximately 27 graduate students from the seven countries affected by the Executive Order. These students attend our institution under valid visas issued by the United States government. These students study and work alongside the University's many thousands of other students, who hail from all over Hawai'i, the United States, and the world.

10. The University has permanent resident faculty from the same seven affected countries, namely Iran, Iraq and Sudan. I am aware of at least ten faculty members who fall within this category and are subject to the Executive Order. There may be more faculty members who fall within this category, because we do not actively track legal permanent residency.

11. In addition, the University also has visiting faculty and scholars who are directly affected by the Executive Order. The University has at least thirty faculty members with valid visas who are from the seven countries affected by this Executive Order As with all institutions of higher education, the scholarship and community of the University of Hawai'i relies upon the collaborative exchange of ideas and research partnerships. The University relies upon faculty, teaching, research, conferences, and program activities that regularly require travel outside the United States.

12. The Executive Order will affect the ability for the faculty and students discussed above to have the freedom to fully engage in their fields of study, by effectively prohibiting travel outside the United States for those affected individuals who are present here today. It is anticipated that the Executive Order will negatively impact their development as scholars and professors; deprive them of the chance to visit family and friends in their countries of origin, or to attend significant personal events such as weddings

and funerals; and prevent their family and friends from being able to reunite with their families, visit Hawai'i or move here permanently. I am aware of faculty who have planned trips to reunite with family members and are concerned about their ability to return to their work and home.

13. The Executive Order will also hinder the diversity of thought and experience that forms the backbone of any institution of higher education. A diverse student body is part of the educational experience for all students. This is immeasurably enriched by our international students and schools, including those from the seven countries targeted in the Executive Order.

14. The University of Hawaii stands with the higher education community nationwide in our concern over the impact the Executive Order has on the free flow of information and ideas. Our experience with higher education indicates that the Executive Order will have not just the direct impacts described here, but will also deter students, scholars and faculty from other affected countries and communities from attending our institutions.

15. The University of Hawai'i and the State of Hawai'i have been immeasurably strengthened through the diversity of the students and faculty we attract. The fundamental values of our nation and our State have long supported the welcoming of others to our Islands and embracing them into our communities.

I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: Honolulu, Hawai'i, Feb. 1, 2017.

/s/ RISA E. DICKSON
RISA E. DICKSON

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-cv-00050-DKW-KJM

STATE OF HAWAI'I AND ISMAIL ELSHIKH, PLAINTIFFS

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF HAKIM OUANSAFI

DECLARATION OF HAKIM OUANSAFI

I, HAKIM OUANSAFI, do declare and would competently testify as follows.

1. I am the Chairman of the Muslim Association of Hawaii. I have held this position for approximately 15 years. I have been a resident of Hawaii since 1998.

2. I have personal knowledge of the matters set forth in this declaration.

3. The Muslim Association of Hawaii is the only formal Muslim organization in the State of Hawaii. The Association owns the Mosque on

Oahu. Dr. Elshik, the plaintiff in this case, is an employee of the Association.

4. As Chairman of the Muslim Association of Hawaii, I am the official contact person for any matters affecting the Association and the Muslim community.

5. Having lived in Hawaii for nearly 20 years, I know well the members of our Muslim community. Members of our congregation will direct newcomers and visitors to me, and it is part of my responsibility as Chairman to greet any newcomers and visitors.

6. Within the last two years, we have had 104 Friday prayer gatherings at the Mosque. Typically 300-400 people a week attend the Friday prayer gatherings. I attend every single one except when I am traveling.

7. I am aware that on March 6, 2017, President Trump issued a new executive order that temporarily bans travel from six Muslim-majority countries. My understanding is that the executive order does not apply to legal permanent residents or other specified limited categories of non-citizens.

8. On at least half a dozen occasions in the last two years (2015-2016), foreign nationals visiting Hawaii from at least one of the six countries in the March 6 executive order have attended our Friday prayer gatherings. I specifically recall having guests from Yemen and Libya.

9. In addition, I am aware of at least two families from Libya who were here in Hawaii while going for medical training at one of the local hospitals. They were here on visas, and have since moved. They attended the Mosque regularly.

10. In addition, I am also aware of at least one student from Sudan who attended the University of Hawaii for his Ph.D. studies in the last couple of years.

11. Our Mosque brings people together from all over the world, including individuals visiting or temporarily residing in Hawaii from the six countries in the March 6 executive order. The executive order, by telling such individuals they are no longer welcome in this country, has undermined the atmosphere in our entire community, and has also stymied the ability of members of our community to associate freely without retaliation.

12. The executive order has also increased fear, anxiety, and grief for families living permanently here in Hawaii who are unable to have their loved ones from the six designated countries visit them here.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Mar. 8, 2017 in Honolulu, Hawaii.

/s/ HAKIM OUANSAFI
HAKIM OUANSAFI

Fact Sheet: Aviation Security Enhancements for Select Last Point of Departure Airports with Commercial Flights to the United States

Release Date: March 21, 2017

Office of Public Affairs
Contact: 202-282-8010

Overview: Change to international travel carry-on items

Evaluated intelligence indicates that terrorist groups continue to target commercial aviation and are aggressively pursuing innovative methods to undertake their attacks, to include smuggling explosive devices in various consumer items. Based on this information, Secretary of Homeland Security John Kelly and Transportation Security Administration Acting Administrator Huban Gowadia have determined it is necessary to enhance security procedures for passengers at certain last point of departure airports to the United States.

These enhancements apply to 10 specific airports. The affected overseas airports are: Queen Alia International Airport (AMM), Cairo International Airport (CAI), Ataturk International Airport (IST), King Abdul-Aziz International Airport (JED), King Khalid International Airport (RUH), Kuwait International Airport (KWI), Mohammed V Airport (CMN), Hamad International Airport (DOH), Dubai International Airport (DXB), and Abu Dhabi International Airport (AUH).

The aviation security enhancements will include requiring that all personal electronic devices larger than a cell phone or smart phone be placed in checked baggage at

10 airports where flights are departing for the United States.

Impacted International Flights Bound for the United States

These enhanced security measures will only affect flights from 10 of the more than 250 airports that serve as last points of departure to the United States. A small percentage of flights to the United States will be affected, and the exact number of flights will vary on a day to day basis. Airlines will know in advance which flights are affected by these measures

Large Electronic Devices

Electronic devices larger than a cell phone/smart phone will not be allowed to be carried onboard the aircraft in carry-on luggage or other accessible property. Electronic devices that exceed this size limit must be secured in checked luggage. Necessary medical devices will be allowed to remain in a passenger's possession after they are screened.

The approximate size of a commonly available smartphone is considered to be a guideline for passengers. Examples of large electronic devices that will not be allowed in the cabin on affected flights include, but are not limited to:

- Laptops
- Tablets
- E-Readers
- Cameras
- Portable DVD players
- Electronic game units larger than a smartphone

- Travel printers/scanners

There is no impact on domestic flights in the United States or flights departing the United States. Electronic devices will continue to be allowed on all flights originating in the United States.

For more information and travel tips, please visit www.TSA.gov (https://www.TSA.gov).

# # #

Topics: Air (/topics/air)

Keywords: aviation security (/keywords/aviation-security, aviation (/keywords/aviation)

Last Published Date: March 21, 2017

Q&A: Aviation Security Enhancements for Select Last Point of Departure Airports with Commercial Flights to the United States

Release Date: March 21, 2017

UPDATED: March 24, 2017 5:00 p.m. EST
Office of the Press Secretary
Contact: 202-282-8010

Q1: Why is the U.S. Government taking these steps now? Are these new policies in response to a specific terrorist threat or plot?

A1: The U.S. Government is concerned about terrorists' ongoing interest in targeting commercial aviation, including transportation hubs over the past two years, as evidenced by the 2015 airliner downing in Egypt, the 2016 attempted airliner downing in Somalia, and the 2016 armed attacks against airports in Brussels and Istanbul. Evaluated intelligence indicates that terrorist groups continue to target commercial aviation, to include smuggling explosive devices in various consumer items.

Based on this trend, the Transportation Security Administration (TSA), in consultation with relevant Departments and Agencies, has determined it is prudent to enhance security, to include airport security procedures for passengers at certain last point of departure airports to the United States. These enhancements include more stringent measures applied to 10 specific airports.

The enhancement in security will require that all personal electronic devices (PEDs) larger than a cell phone

or smart phone be placed in checked baggage. These items will no longer be allowed to be carried onto aircraft at 10 select airports where flights are departing for the United States. Approved medical devices may be brought into the cabin after additional screening.

This security enhancement will be implemented through a Security Directive (SD)/Emergency Amendment (EA) process, which includes industry notification, to affected air carriers that will implement the requirements.

Q2: Why is DHS/TSA doing this now?

A2: The Department of Homeland Security, in close cooperation with our intelligence community partners, continuously assesses and evaluates the threat environment. While a number of existing security measures remain in place, others will be modified, as deemed necessary to protect travelers. DHS will continue to adjust its security measures to ensure the highest levels of aviation security without unnecessary disruption to travelers.

Q3: Is there a specific or credible threat to aviation?

A3: We have reason to be concerned about attempts by terrorist groups to circumvent aviation security and terrorist groups continue to target aviation interests. Implementing additional security measures enhances our ability to mitigate further attempts against the overseas aviation industry.

Q4: Did new intelligence drive a decision to modify security procedures?

A4: Yes, intelligence is one aspect of every security-related decision. The record of terrorist attempts to destroy aircraft in flight is longstanding and well-known. We continually re-assess old intelligence and collect new intelligence.

Q5: How did you select these airports and which ones are affected?

A5: DHS, in close cooperation with our intelligence community partners, selected these airports based on the current threat picture. The affected overseas airports are: Queen Alia International Airport (AMM), Cairo International Airport (CAI), Ataturk International Airport (IST), King Abdul-Aziz International Airport (JED), King Khalid International Airport (RUH), Kuwait International Airport (KWI), Mohammed V Airport (CMN), Hamad International Airport (DOH), Dubai International Airport (DXB), and Abu Dhabi International Airport (AUH).

Q6: Could more airports be added in the future, and might some of those be in the U.S.?

A6: As threats change, so too will TSA's security requirements.

Q7: How long will these new procedures remain in place?

A7: The new procedures remain in place until the threat changes. These are risk-based decisions and TSA continuously assesses security risks and seeks to

balance necessary security requirements with their operational impact on the industry.

Q8: Why won't these procedures continue indefinitely, like the prohibition on bringing liquids through security screening?

A8: See above.

Q9: How are you defining, "larger than a smart phone?"

A9: The size and shape of smart phones varies by brand. Smartphones are commonly available around the world and their size is well understood by most passengers who fly internationally. Please check with your airline if you are not sure whether your smartphone is impacted.

Q10: Why does this only apply to large electronic devices? Why doesn't this apply to mobile phones?

A10: TSA seeks to balance risk with impacts to the traveling public and has determined that cell phones and smart phones will be allowed in accessible property at this time.

Q11: Is air travel safe?

A11: Yes. Today, all air travelers are subject to a robust security system that employs multiple layers of security, both seen and unseen, including:

- Intelligence gathering and analysis
- Cross-checking passenger manifests against watchlists
- Thorough screening at checkpoints
- Random canine team screening at airports
- Reinforced cockpit doors

- Federal air marshals
- Armed pilots
- A vigilant public

In combination, these layers provide enhanced security creating a much stronger and protected transportation system for the traveling public. TSA continually assesses and evaluates the current threat environment and adjusts security measures as necessary to ensure the highest levels of aviation security without unnecessary disruption to travelers.

Q12: How will TSA ensure foreign airports and air carriers are complying with the new procedures?

A12: TSA conducts assessments of foreign airports and inspections of airlines to ensure all U.S. regulations and International security standards are being met at last point of departures to the United States. TSA directly assesses the security posture of last points of departure airports under the Foreign Airport Assessment Program (FAAP) and evaluates the implementation of the internationally recognized International Civil Aviation Organization (ICAO) standards. TSA also utilizes its regulatory authorities over the air carriers which serve the United States to implement enhanced security measures at foreign locations. As an element of each air carrier's legally binding approval to operate to and from the United States, the airline agrees to meet all security requirements stipulated by TSA.

Q13: How does this affect the American public, either those traveling to/from these selected airports and those flying within the U.S.?

A13: All passengers flying through and from these locations will have to place electronic devices that are larger than a cell phone/smart phone in their checked bags regardless of the passenger's citizenship.

Q14: Will the security procedures continue to apply to both international and domestic passengers?

A14: This applies to all passengers traveling from 10 specific airports overseas.

Q15: Why are you only implementing these measures overseas, could the same tactics be used domestically?

A15: Electronic devices will still be allowed on all flights originating in the United States. Security procedures, both seen and unseen, are in place to mitigate the risk to flights in the United States.

Q16: Does TSA have to hire additional officers, or transfer some to the affected airports, to ensure the new screening procedures are followed?

A16: No additional TSA personnel are needed because TSA does not conduct screening at airports outside the United Sates.

Q17: Are the security measures introduced on July 2, 2014 still in place?

A17: A number of those implemented security measures remain in place while others may be modified as deemed necessary to protect travelers. Since July 2, 2014, a number of foreign governments have themselves

enhanced aviation security, buttressing and replacing our own measures at these airports when it became routine at overseas airports for security officials to ask some passengers to turn on their electronic devices, including cell phones, before boarding flights to the United States.

Q18: How many flights does this affect?

A18: This will only impact flights from 10 of the more than 250 airports that serve as last points of departure to the United States. This will only impact a small percentage of flights to the United States. The exact number of flights will vary on a day to day basis.

Q19: How many passengers will be affected?

A19: These measures will apply to all passengers on flights from the 10 last points of departure airports, a small fraction of passengers traveling to the United States by air each day.

Q20: Will this affect passengers enrolled in trusted traveler programs?

A20: These measures will apply to all passengers on flights from certain locations regardless of trusted traveler status.

Q21: What do you recommend passengers do if they are flying out of one of the last point of departure airports?

A21: Passengers should pack large personal electronic devices in checked bags and contact their air carrier with additional questions.

Q22: How will this affect the screening process at the airport?

A22: Generally, passengers will be instructed to place large electronic devices in their checked bags when traveling from one of the last point of departure airports. We provided guidance to the airlines who will determine how to implement and inform their passengers.

Q23: How will this affect passengers with connections?

A23: TSA recommends passengers transferring at one of the 10 affected airports place any large personal electronic devices in their checked bags upon check-in at their originating airport.

Q24: Can you provide any examples of recent terrorist plotting against the aviation sector? Please highlight the trend you're concerned about.

A24: Although the U.S. has instituted robust aviation security measures since 9/11, our information indicates that terrorist groups' efforts to execute an attack against the aviation sector are intensifying given that aviation attacks provide an opportunity to cause mass casualties and inflict significant economic damage, as well as generate overwhelming media coverage.

We note that disseminated propaganda from various terrorist groups is encouraging attacks on aviation, to include tactics to circumvent aviation security. Terrorist propaganda has highlighted the attacks against aircraft in Egypt with a soda can packed with explosives in October 2015, and in Somalia using an explosives-laden laptop in February 2016.

Terrorists have historically tried to hide explosives in shoes in 2001, use liquid explosives in 2006, and conceal explosives in printers in 2010 and suicide devices in underwear in 2009 and 2012. Within the last year, we have also seen attacks conducted at airports to include in Brussels and Istanbul.

Q25: How were these countries informed?

A25: USG officials coordinated with their foreign counterparts to inform them of the changing threat. TSA has a formal process for notifying airlines through the EA/SD process. This process was used to notify affected airlines of the needed changes.

Q26: How will this be implemented?

A26: The Airlines will have 96 hours to implement. The manner of an EA/SD is to tell an airline the end result required (no electronic devices larger than a cell phone allowed in the cabin) and allow them the flexibility to implement within their business model.

Q27: Will U.S. direct hires/diplomats posted in these countries be told to take other routes/airlines?

A27: No. U.S. government employees in the affected countries have the option, but are not required, to modify their travel routes. The new routes must comply with all U.S. government travel regulations.

Q28: Will this apply to flights departure to affected countries?

A28: No. At this time, evaluated intelligence says that the threat exists at the 10 last point of departure airports.

Q29: Does this start tomorrow?

A29: Airlines were notified on March 21st at 3:00 a.m. EDT. They have 96 hours within which to comply.

Q30: How long will these enhanced security measures be in effect?

A30: These measures will be in effect indefinitely. However, DHS and TSA continue to evaluate our aviation security processes and policies based on the most recent intelligence.

Q31: What will happen to my checked bag with my electronic devices once I land in the United States?

A31: TSA will increase explosives detection screening of passenger luggage on select international inbound flights upon domestic arrival. The screening will occur prior to releasing the luggage back to passengers. It is possible that this process may result in delays for connecting luggage.

Q32: Once I arrive in the U.S. and retrieve my bag, what if I miss my connecting flight to my final U.S. destination?

A32: Contact your connecting airline on how best to rebook to your final U.S. destination. Additionally, consider contacting your airline prior to your flight to inquire about your connection time.

Q33: What U.S. domestic airports will be impacted?

A33: Atlanta (ATL), Boston (BOS), Chicago O'Hare (ORD), Dallas-Ft. Worth (DFW), Ft. Lauderdale (FLL), Houston Intercontinental (IAH), Los Angeles (LAX), Miami (MIA), Orlando (MCO), New York Ken-

nedy (JFK), Philadelphia (PHL), San Francisco (SFO), Seattle-Tacoma (SEA), and Washington Dulles (IAD).

Q34: What do I do if my electronics are damaged or missing from my baggage when I arrive at my destination?

A34: Regardless of where you are flying to/from or what airline you are flying on, you should always contact your airline if there is an issue with your checked baggage.

Q35: Are U.S. government employees who are assigned U.S. government laptops also restricted from carrying their laptops in carry-on bags on these flights?

A35: The limits on the size of electronics in carry-on bags apply to all passengers, including U.S. government employees with U.S. government-issued laptops.

Q36: What is the procedure if something screens positive for explosives?

A36: TSA partners with local law enforcement officials at each airport and has protocols in place for proper response when a bag triggers an alarm during screening.

# # #

Topics: Air (/topics/air)

Keywords: aviation (/keywords/aviation) , aviation security (/keywords/aviation-security)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

No. 1:17-cv-00050-DKW-KJSC

STATE OF HAWAI'I, PLAINTIFF

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; REX TILLERSON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND THE UNITED STATES OF AMERICA, DEFENDANTS

DECLARATION OF LAWRENCE E. BARTLETT

Judge: Hon. Derrick K. Watson

DECLARATION OF LAWRENCE E. BARTLETT

I, Lawrence E. Bartlett, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a career member of the Senior Executive Service and currently serve as the Director of the Refugee Admissions Office within the Bureau of Populations, Refugees and Migration at United States Department of State. I have been in this position for six years. The statements contained in this declaration are based on my personal knowledge or on information provided to me in my official capacity.

2. In Fiscal Year 2017 to date, 38,484 refugees have arrived and been resettled in the United States. Of that number, 3 were resettled in Hawaii.

3. In Fiscal Year 2016, 84,994 refugees arrived and were resettled in the United States. Of that number, none were resettled in Hawaii.

4. In Fiscal Year 2015, 63,933 refugees arrived and were resettled in the United States. Of that number, 7 were resettled in Hawaii.

5. In Fiscal Year 2014, 69,987 refugees arrived and were resettled in the United States. Of that number, 2 were resettled in Hawaii.

6. In Fiscal Year 2013, 92,926 refugees arrived and were resettled in the United States. Of that number, 6 were resettled in Hawaii.

7. In Fiscal Year 2012, 58,238 refugees arrived and were resettled in the United States. Of that number, one was resettled in Hawaii.

8. In Fiscal Year 2011, 56,424 refugees arrived and were resettled in the United States. Of that number, none were resettled in Hawaii.

9. In Fiscal Year 2010, 73,311 refugees arrived and were resettled in the United States. Of that number, one was resettled in Hawaii.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of Mar., 2017.

/s/ LAWRENCE E. BARTLETT
LAWRENCE E. BARTLETT
Director of the Office of Admissions
Bureau of Populations, Refugees and Migration
United States Department of State

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF HAWAI'I

CIVIL ACTION NO. 1:17-CV-00050-DKW-KSC

HAWAII, ET AL., PLAINTIFFS

v.

DONALD TRUMP, ET AL., DEFENDANTS

DECLARATION OF REBECCA HELLER, DIRECTOR OF THE INTERNATIONAL REFUGEE ASSISTANCE PROJECT

DECLARATION OF REBECCA HELLER

I, Rebecca Heller, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Director and co-founder of the International Refugee Assistance Project ("IRAP"), a project of the Urban Justice Center, Inc. I have been with IRAP since August 2008.

2. As IRAP's Director, I oversee all of IRAP's operations and activities, including programming and development. I am in constant, regular communication with my staff who provide legal representation to vulnerable individuals and consult with pro bono attorneys and law students working on IRAP cases. I also represent a number of refugee and visa cases myself, consult with numerous attorneys work-

ing on related cases, monitor field conditions on the ground in the Middle East/North Africa Region, liaise with the U.S. government and the United Nations around refugee and visa processing issues, and coordinate partnerships with numerous NGOs working with and advocating for refugees and immigrants in the U.S. and abroad.

3. Throughout my eight and a half years working on Middle East refugee issues, I have overseen, consulted on and/or represented thousands of cases. I also teach a seminar on refugee law and practice at Yale Law School. Founded in 2008, IRAP's mission is to provide and facilitate free legal services for vulnerable populations around the world, including refugees, who seek to escape persecution and find safety in the United States and other Western countries. IRAP has a staff of over 25 individuals based in offices in New York, Lebanon, and Jordan. IRAP works with 29 law school chapters and over 75 firms to provide pro bono assistance to persecuted individuals around the world. IRAP relies on the volunteer and pro bono assistance to meet the needs of its client base.

4. IRAP lawyers provide legal assistance to refugees and other immigrants to the United States throughout the resettlement process. IRAP also assists many individuals (including refugees, asylees, Lawful Permanent Residents and U.S. Citizens) inside the United States who need assistance filing family reunification peti-

tions for family members overseas. IRAP has provided legal counseling and assistance to nearly 20,000 individuals.

5. Since its inception, IRAP has helped to resettle over 3,200 individuals from 55 countries of origin, with the majority resettled to the United States.

6. IRAP's client base includes refugees from Iraq, Afghanistan, Egypt, Eritrea, Ethiopia, Iran, Jordan, Kuwait, Libya, Pakistan, Palestine, Somalia, Sudan, Syria, Turkey, and Yemen. Of IRAP's current 606 open cases, 421 families are from one of the six countries or are refugees from other countries and targeted in the new Executive Order.

7. Many of IRAP's clients have been referred to the US for resettlement by UNHCR. UNHCR only refers the most vulnerable refugees for resettlement, such as unaccompanied minors, women-at-risk, and individuals with urgent medical or protection concerns. Less than 1% of refugees worldwide are referred for resettlement by UNHCR. If UNHCR refers an individual to USRAP, they are likely extremely vulnerable and have strong, pre-vetted refugee claims. Further, once UNHCR refers a refugee to USRAP, it precludes them from referring the refugee to another country until the USRAP process is completed.

8. IRAP works with some of the most vulnerable individuals in the world, including US..-

affiliated refugees, LGBTI refugees, women who have survived trafficking, sexual and gender-based violence, and children with emergency medical needs.

9. As the refugee resettlement process is quite intricate, some background on the various programs will help explain the importance of recognizing the attorney-client relationship between a refugee and a legal services provider as well as how many refugees have a de facto bona fide relationship with a person or entity in the United States.

The U.S government's interpretation of the Supreme Court decision contradicts the basic mechanics of the U.S. Refugee Admissions Program, as all refugees must eventually form a direct relationship to a U.S. entity in order to be resettled to the United States.

10. Refugees are resettled to the United States through three "priority" streams, which are different ways to access the U.S. Refugee Admissions Program ("USRAP"). Though the names of these categories are "Priority 1," "Priority 2," and "Priority 3" (or P-1, P-2, and P-3), these names do not indicate the order of priority.

11. Priority 1 (P-1) referrals are individuals who are referred based on particular, individual needs. These cases may be referred to the U.S. Refugee Assistance Program ("USRAP") by the United Nations High Commissioner for Refugees ("UNHCR"), or, in much smaller numbers, by a U.S. Embassy or a qualified NGO.

Although not required, some refugees referred by UNHCR have close family members in the United States, including grandparents, aunts, uncles, and cousins.

12. Refugees who access USRAP via a U.S. Embassy are often personally known to the embassy. State Department guidance in the Foreign Affairs Manual gives examples of these individuals such as prominent members of a political opposition or religious minority, well-known journalists, or LGBTI individuals. Similarly, NGOs which refer refugees to USRAP must have been trained by the Departments of State and Homeland Security and work with the State Department's regional refugee coordinator to make the referral.

13. One of IRAP's P-1 clients is a transgender Sudanese activist who fled to Egypt as a result of severe persecution because of her LGBTI work. She became known to the U.S. Embassy in Sudan which referred her to the State Department and she was given access to USRAP. She has been now waiting in limbo for a USCIS interview to be scheduled and remains in danger in Cairo where transgender individuals are routinely harassed, assaulted, and persecuted.

By definition, refugees in the Central American Minors Program, the Lautenberg religious minorities program, and the Direct Access Program for U.S.-affiliated Iraqis and Syrians must have a direct relationship with a U.S. person or entity to access USRAP.

14. Priority 2 (P-2) referrals are individuals who are eligible for resettlement based on a State Department determination that they belong to a group of "special humanitarian concern" to the United States. Several P-2 groups exist including Refugee Processing for Religious Minorities in the Former Soviet Union and in Iran (known as the Lautenberg Amendment), the Central American Minors Program, and the Direct Access Program for U.S.-affiliated Iraqis and Syrians. All of these P-2 categories require a direct U.S. tie in order to access the U.S. refugee resettlement program.

15. The P-2 group for religious minorities in the Former Soviet Union and in Iran (authorized by the Lautenberg Amendment), requires a U.S.-based resettlement agency to initiate the application for the refugee, thereby immediately establishing a direct relationship between a U.S. entity and the refugee. Religious minorities in the Former Soviet Union include Jews, Evangelical Christians, Ukrainian Orthodox, and Catholics. A spouse, parent, child, sibling, or grandparent can initiate the application through the resettlement agency by filing an Affidavit of Relationship. Those same categories of family members are eligible to apply for refugee status. Religious minorities in Iran include Christians, Jews, Mandeans, Baha'is, and Zorastrians, and a U.S. relative or friend may initiate the application.

16. Another P-2 group, the Central American Minors ("CAM") program, exists for refugee children from El Salvador, Guatemala, and Honduras who have parents lawfully in the United States. The program was founded to give children an alternative to the dangerous journey that some children had attempted without authorization. The purpose of the program is to reunite families in a safe manner. The program requires the minors to demonstrate a relationship to their parents via DNA testing and filing an Affidavit of Relationship.

17. One of the larger P-2 groups is known as the Direct Access Program for U.S.-affiliated Iraqis and Syrians ("DAP"). The Direct Access Program allows Iraqis and Syrians who have a U.S. tie, either by family or employment, to come to the United States through the refugee program.

18. In 2008, the bipartisan Refugee Crisis in Iraq Act was signed into law, allowing six categories of Iraqis to access USRAP based on work for the US government or a US-based entity or family connections with individuals in the United States. In order to access USRAP through employment, Iraqis must have either worked as an interpreter for the U.S. Government or Multi-National Forces in Iraq, been employed by the U.S. government in Iraq, been employed by a U.S. funded organization or entity, or been employed by a U.S.-based media organization or NGO. Before being inter-

viewed by USCIS, the State Department must verify the employment relationship through contracts, HR letters, badges of employment, and letters of recommendation from U.S. supervisors.

19. Both Iraqi and Syrian nationals with an approved I-130 petition are also eligible for the DAP. This program allows participants to obtain travel documents before their visa priority date would otherwise become current, thereby allowing them to join their families sooner in the United States. Both groups, in all circumstances, will satisfy the bona fide relationship test because the program requires a direct relationship with a U.S. entity or family member to access the program. At least 50,000 individuals are waiting for interviews in the Iraqi program; we estimate that 60,000 total individuals may be waiting for admission under the Iraqi and Syrian DAP.

20. Our P-2 refugee clients face extreme danger while they wait to be processed. For example, one of our clients completed his pre-screening interview on June 12, 2017 and is awaiting his USCIS interview. As he waits, he hides in his apartment in Baghdad, Iraq, with his wife and children. If they leave their apartment, they are in danger of being killed by radical Shiite militia known as the Mahdi Army. The Mahdi Army already killed one of his brothers and has tortured another because of the family's behalf of the U.S. government. They are intent on

killing IRAP's client as well and is only means of true safety is resettlement to the United States.

21. Another P-2 IRAP client is a 36-year-old Syrian refugee who fled to Yemen and then Saudi Arabia with her husband and two young children. Her sister is a U.S. Citizen, living in the United States, who filed an I-130 petition for her to come to the United States. The petition has been proved the client has accessed USRAP through DAP. She cannot return to Syria, where she was persecuted for her religion. Her and her family's lives continue to be in grave danger in Saudi Arabia, where she lives near the Yemeni border and is exposed to frequent rocket attacks and ongoing military conflict.

Refugees in family reunification programs clearly demonstrate their bona fide relationship to a U.S. person because the U.S.-based relative is required to access USRAP.

22. Priority 3 (P-3) referrals are individuals with close relatives—parents, children, and spouses —recently admitted to the United States as a refugee or asylee and require DNA testing to access USRAP. P-3 submissions have four procedural requirements: (1) affidavit of relationship (AOR); (2) minimum age; (3) five-year filing; and (4) DNA testing. To initiate a P-3 case, a local resettlement agency must submit an Affidavit of Relationship ("AOR") on behalf of the P-3 applicant. In order to complete the

form, the principal relative must upload current digital photographs of all family members, derivatives, and add-ons. Once completed, the local agency will submit the AOR to a Refugee Processing Center, which will then refer it to USCIS for case creation, processing, and adjudication. P-3 applications require DNA relationship testing between the principal relative and their biological parents or biological children. The principal relative bears the initial costs of DNA testing. We estimate that 2,000 individuals are awaiting admission in the P-3 program.

23. Alternatively, an individual who has been granted asylum or refugee status in the United States and who was also the principal applicant for his or her family may petition to have his or her spouse and/or unmarried child(ren) under the age of 21 "follow-to-join" him or her in the United States. A Form I-730 Refugee/Asylee Relative Petition must be filed for each qualifying family member within two years of the principal applicant's admission as a refugee or grant of asylum.

The U.S. Refugee Admissions Program requires that all refugees have a direct relationship to a U.S. entity in order to be resettled.

24. Refugees who do not have a family member in the U.S. or a relationship with a U.S. entity prior to their referral to USRAP, will necessarily develop a relationship with a U.S. entity at some point in the processing. Two particu-

lar points in processing may lead to such a relationship.

25. First, once a refugee has completed multiple interviews assessing their eligibility for refugee status, his or her name is submitted to any one of the nine non-profit agencies that contract with the U.S. government to provide resettlement (specifically reception and placement services) and integration services. These voluntary resettlement agencies, called "volags," receive names of refugees cleared for travel, and then provide "assurances," or a guarantee that they will provide their services to that individual when they arrive. Assurances typically happen close to the last stages of the resettlement process, which is the arrival notice. As of June 26, 2017, there were 26,353 assured (but not arrived) individuals in the USRAP pipeline. Some, but not all, of the services volags provide include picking refugees up at the airport, providing them with culturally appropriate meals, securing them with long-term housing, accessing benefits and healthcare, and providing job training.

26. These assurances constitute a direct tie to a U.S. entity. However, the government has indicated that they will not resettle all currently assured refugees after July 6, 2017, despite their direct relationships with U.S. entities. There are assured refugees booked for travel to the United States through July 27, 2017, and

resettlement agencies across the United States have been preparing tirelessly for their arrival.

27. Second, an individual may have legal representation from a U.S.-based organization; IRAP is the primary organization that provides legal representation to refugees in the USRAP.

28. Furthermore, many P-1 refugees who do have close family ties in the United States would not qualify for resettlement under the government's current interpretation of a "bona fide relationship" under the Supreme Court decision.

29. For example, a Ukranian refugee who is currently scheduled for travel to the United States after July 6, 2017, would no longer be allowed to enter the United States because her the closest family member she has in the United States is her grandmother.

30. As a result of the government's current interpretation of the Supreme Court's decision, many refugees—those who lack any of the family relationships that the government currently recognizes—would have their applications delayed by months or years. These long delays could result from the 120-ban because security and medical checks only line up for a short window, after which the applicant must restart the security check process. Additionally, with a lowered refugee cap of 50,000, there are fewer resettlement slots available this fiscal year, adding to the delays in resettlement.

See Ex. __). Yet all of these clients have a strong relationship with IRAP itself.

Representation by legal service providers, such as IRAP, constitute an attorney-client relationship and qualify as a bona fide relationship between a refugee and a U.S. person or entity.

31. Because of the complexity of the refugee resettlement process, IRAP lawyers and *pro bono* legal teams work closely with their clients to bring them to safety. The representation that IRAP provides is intensive and includes multiple forms of assistance. For example, IRAP has offices in Amman, Jordan and Beirut, Lebanon which are staffed with U.S.-barred attorneys where they regularly meet with refugee clients, prep them for and accompany them to interviews, and assist them with psychosocial, educational, and medical referrals to local partner organizations. IRAP also has case workers on staff, such as individuals trained in social work, who provide non-legal support to our clients.

32. The intake and screening process itself establishes a strong relationship between the organization and the client. This process can take several weeks to months, with IRAP attorneys or volunteers spending hours each day interviewing a client, establishing the facts underpinning his or her application, and preparing a declaration and application on the basis of those facts.

33. After an intensive and exhaustive intake process, IRAP may take on a refugee's case for representation after signing a formal representation agreement. These cases frequently require two to three years of representation, if not longer. IRAP attorneys assist refugees through the process by conducting extensive fact finding to corroborate their clients' claims, drafting legal submissions before UNHCR and the U.S. government advocating for their client's case, and preparing their clients for the adjudication interviews which can last for hours. Additionally, IRAP attorneys monitor their clients' medical and protection needs and will request the relevant agency to expedite processing if there is urgency in the case. For P-2 DAP employment cases, IRAP attorneys will assist with verifying the client's affiliation with the U.S. government, a U.S.-funded NGO, or a U.S. media organization. For P-2 DAP family cases, IRAP attorneys assist the U.S.-based family member with filing a Form I-130 to USCIS and then continues representing the refugee client once they access USRAP.

34. If an application is denied by UNHCR, IRAP staff will assist clients by submitting an appeal. If the U.S. government denies a client refugee status, IRAP attorneys prepare a Request for Review ("RFR") on behalf of the client and also file Freedom of Information Act ("FOIA") requests to supplement their RFR. They conduct further client interviews to prepare sup-

plemental declarations, draft the request itself, and help the client prepare for the interview.

35. Moreover, IRAP attorneys have provided guidance and advice to their refugee clients entering the United States and have filed habeas petitions for clients who have been unlawfully detained trying to enter the United States.

36. During this process, IRAP also provides other forms of practical assistance. For example, IRAP has worked with partner organizations to provided safe housing for clients whose lives are in immediate danger while they await the outcomes of USRAP. IRAP has also worked with psychologists and psychiatrists to provide counseling and evaluations to refugees who have suffered from severe persecution and trauma and are in need of mental health treatment.

The U.S. government's interpretation of the Supreme Court decision reflects a fundamental misunderstanding of USRAP and an attempt to dismantle a lifeline for persecuted individuals. The government's actions continue to take a toll on IRAP's clients and resources.

37. The government's interpretation of the injunction will also continue the significant backlog in the USRAP that resulted from the first Executive Order, delaying the processing of many of IRAP's clients' cases. This delay will force IRAP to exhaust more of its resources, as the average lifespan of a case now grows significantly. IRAP has a legal department com-

posed of staff attorneys who advise and provide consultation to its network of pro bono legal volunteers on their casework. Because of delays in processing, IRAP's attorneys must spend significantly more time on each case, providing guidance about alternative routes to safety and possible exemptions. In addition to IRAP's staff attorneys' existing and ongoing responsibilities, they must now also draft and review additional submissions to State and to the Department of Homeland Security ("DHS"), such as waiver requests for admission to the United States for their clients, which will be reviewed by a case-by-case basis under the new Executive Order. Further, IRAP's field staff must largely give up their work on refugee case processing and focus primarily on ensuring the local safety of refugees who thought their lives would be saved for resettlement, and who are now caught in life-threatening limbo.

38. As a result of the government's narrow interpretation, IRAP attorneys must also counsel their own clients about the changes in law as well as pursue other resettlement options for them, even though many were already being processed in the U.S. Refugee Admissions Program ("USRAP"). The first Executive Order has already wasted significant resources (typically hundreds of hours of legal representation over the course of many years navigating USRAP), forcing IRAP and our clients to make the Hobson's choice between starting the pro-

cess over with another country, attempting to shelter in place in spite of life-threatening circumstances, or undertaking dangerous journeys to reach safety across other borders.

39. I am deeply concerned by the U.S. government's interpretation of the Supreme Court decision. In addition to many refugees in USRAP accessing the program through a bona fide relationship to a U.S. person or entity, all refugees develop a bona fide relationship to a U.S.-based entity once a resettlement agency assures their reception and placement in the United States. Thus, to deny refugees in USRAP admission to the United States based on a lack of bona fide ties is contrary to the functioning of the refugee resettlement program.

40. Moreover, I believe that the government's actions reflect an attempt to dismantle USRAP. For example, in June 2017, I learned of denials of 50 Somali refugee cases out of Kenya even though USCIS had not yet interviewed any of those families. In other words, they were denied before a U.S. immigration officer even looked at their case. Having worked with refugees for nearly a decade, I have never seen this type of denial en masse before, and I fear that the government is seeking to block entire nationalities from coming to the United States through USRAP.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: June 30, 2017

/s/ REBECCA HELLER
REBECCA HELLER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-CV-00050-DKW-KSC

STATE OF HAWAI'I, PLAINTIFF

v.

DONALD TRUMP, ET AL., DEFENDANTS

DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

I, Mark Hetfield, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the President and Chief Executive Officer of HIAS, Inc.

2. HIAS was founded in 1881 as the Hebrew Immigrant Aid Society to assist Jews fleeing pogroms in Russia and Eastern Europe. It is the world's oldest —and only Jewish—national refugee resettlement agency. Today, HIAS serves refugees and persecuted people of all faiths and nationalities around the globe. Since HIAS's founding, the organization has helped more than 4.5 million refugees start new lives. In 2016 alone, HIAS provided services to more than 350,000 refugees and asylum seekers globally.

3. HIAS has offices in twelve countries worldwide, including its headquarters in Silver Spring, Maryland, its principal place of business, and additional domestic offices in New York City and Washington, D.C.

4. HIAS's refugee resettlement work is grounded in, and an expression of, the organization's sincere Jewish beliefs. The Torah, Judaism's central and most holy text, commands followers to welcome, love, and protect the stranger. The Jewish obligation to the stranger is repeated in various ways throughout the Torah, more than any other teaching or commandment. HIAS believes that this religious commandment demands concern for and protection of persecuted people of all faiths. The Torah also teaches that the Jewish people are to welcome, protect, and love the stranger because "we were strangers in the land of Egypt" (Leviticus 19:34). Throughout their history, violence and persecution have made the Jewish people a refugee people. Thus, both our history and our values lead HIAS to welcome all refugees in need of protection. A refusal to aid persecuted people of any one faith, because of stigma attached to that faith, violates HIAS's deeply held religious convictions.

5. HIAS's client base includes refugees and their families abroad and those located in the United States. Hundreds of these clients hail from the six countries singled out in Section 2(c) of the March 6 Executive Order, including Syria, Iran, Sudan, Somalia, and Yemen. Other clients, who will also be affected by the 120-day ban on refugees in Section 6(a) of the Order, hail from countries that include Iraq, Ukraine, Bhutan, the Democratic Republic of the Congo, Afghanistan,

Eritrea, Tanzania, Ethiopia, Central African Republic, Burundi, South Sudan, Uganda, Russia, Belarus, Burma, and El Salvador. Its overseas clients are seeking refugee status, and do so precisely because they face a real risk of persecution at home. They remain in precarious situations often in third countries.

6. The refugee resettlement process typically begins with the office of the United Nations High Commissioner for Refugees ("UNHCR"), which interviews and screens the applicant and determines whether the applicant may qualify as a refugee, and where the applicant may resettle. In certain circumstances, specially trained non-governmental organizations will identify the refugee and begin this process. Some refugee-clients of HIAS started the application process without a referral from the UNHCR or entity. Some of these refugees are close relative of asylees and refugees already in the United States; others belong to specific groups identified in by statute or the U.S. Department of State as eligible for direct access to the refugee and resettlement program.

7. The U.S. Department of State or U.S. Citizenship and Immigration Services will then assign the refugee to a Resettlement Support Center ("RSC"). HIAS is one of five agencies that operate RSCs. These relationships are formal, documented, and formed in the ordinary course of HIAS's business. None of these relationships were formed for the purpose of evading the refugee ban.

8. The RSC operated by HIAS in Austria is primarily intended for Iranian refugees who fled religious persecution in Iran. Every one of those Iranian refu-

gees has a relationship with a person in the United States who is the "anchor" for that case, who initiates the resettlement application, and who provides a "Care and Maintenance deposit" to ensure that the applicant will be able to cover his or her living expenses while waiting to be processed in Austria. None of the relationships between the U.S. anchor and the applicant was arranged for the purpose of evading the refugee ban. Under the policy of the U.S. Refugee Admissions Program, the U.S. anchor may or may not be a close relative of the refugee applicant.

9. The RSCs are responsible for organizing the physical processing of refugee applicants, educating the applicant about the process, and preparing the physical case file. The RSC will also interview the applicant and enter the relevant application document into the Department of State's Worldwide Refugee Admission Processing System ("WRAPS"), cross reference and verify the data, and send information required for a background check to other U.S. agencies.

10. Even before many individuals are referred to an RSC, HIAS provides intensive psychosocial, legal and livelihood assistance to vulnerable refugees around the world. It works closely with the UN refugee agency to identify cases that cannot secure durable solutions in the countries to which they have fled. HIAS staff develop in-depth relationships with clients who receive psychosocial assistance, including individual counseling and group therapy. Staff also develop bonds with refugees through our legal work which includes asylum preparation and through our livelihoods and employment services. Through HIAS' comprehensive pro-

gramming, staff come to understand all of the challenges that these individuals experience either because of the persecution they have faced in their countries of origin or because of the issues they deal with in the countries of asylum. HIAS build relationships with individual clients as well as other family members ensuring that they are able to access protection services and durable solutions.

11. HIAS staff involved in referring cases for resettlement are in close contact with the UN refugee agency to determine the progress of clients that are referred through the United States Refugee Admissions Program (USRAP). HIAS staff is often in contact with refugees after they have been resettled to the United States to find out how they are faring and obtain feedback on how we can improve our services. Because of the intensive work that HIAS has done with clients through direct services, HIAS is able to maintain ties after they are no longer in the countries of first asylum.

12. Clients referred to the USRAP must fall into certain categories of vulnerability. As such, HIAS builds up these ties through the close support that we provide to clients particularly by way of the psychosocial and mental health services HIAS offer which help refugees recover from trauma and move on with their lives. For those refugees who simply cannot access the protection that they need to stay safe, HIAS assists them to secure durable solutions, thus developing strong ties with individuals through the provided support.

13. The RSC process can often take 18-24 months or longer, during which time the RSC serves as the pri-

mary point of contact as the refugee undergoes the extensive background checks and processing required by U.S. governmental entities. The RSC will also work with the refugee applicant to address any changes related to application that occur in the course of the process, such as whether refugee's application needs to be considered for expedited consideration, or if there is a change to the family composition, such as a birth, death, divorce, or marriage.

14. Should the application proceed, applicants must complete a cultural orientation course and a medical screening, the results of which are also entered into WRAPS.

15. If the case is cleared, resettlement agency representatives, who meet weekly to review WRAPS information, will determine where to resettle the refugee. Should the applicant be assigned to the United States, the applicant will be subject to further screening from United States Customs and Border Protection, and the Transportation Administration's Secure Flight Program.

16. Once all refugee processing is complete, refugee clients are assigned via the State Department's allocation process to one of nine non-profit agencies that contract with the United States government as resettlement agencies. HIAS is one of the nine resettlement agencies. To serve these refugees, HIAS currently holds sub-agreements with 18 local organizations ("affiliates") who operate and oversee 21 resettlement sites across the country. Once a refugee is approved for resettlement, they are matched to a local affiliate, who then provides an "assurance," which is a

guarantee that the affiliate will provide services to the individual when he/she arrives.

17. As a resettlement agency, HIAS and its affiliates are required to arrange for the reception and placement of refugees in the United States and offer appropriate assistance during their initial resettlement in the United States; provide refugees with basic necessities and core services during their initial period of resettlement; and in coordination with publicly supported refugee service and assistance programs, assist refugees in achieving economic self-sufficiency through employment as soon as possible after their arrival in the United States. These relationships are formal, documented, and formed in the ordinary course of HIAS's business. None of these relationships were formed for the purpose of evading the refugee ban.

18. After a refugee has been given an assurance, but before the refugee has been issued a visa, HIAS and its affiliates begin the involved process of arranging for the reception, placement, and appropriate initial resettlement assistance for the refugee. Refugees typically travel 2 to 6 weeks after receiving an assurance by one of the affiliates.

19. As a resettlement agency, HIAS and its affiliates ensure that the arriving refugees assigned to it are met at the airport of final destination and transported to furnished living quarters and provided culturally appropriate, ready-to-eat food and seasonal clothing as necessary to meet immediate needs.

20. HIAS and its affiliates also find housing for the refugee or refugee family, provides them with money

for rent and utilities for up to three months, and supplies them with initial food and medical care before government-funded benefits begin. In addition, HIAS and its affiliates' case management services include providing initial safety orientation followed by weeks of extensive cultural orientation to adjust them to life in America, and HIAS and its affiliates assist the refugee or refugee family in enrolling in ESL classes, school, employment services, and benefits programs (including Medicare, food stamps and Supplemental Security Income for the elderly and disabled).

21. During this time, HIAS and its affiliates develop a close relationship with the refugee or refugee family, as they provide critical support during this vulnerable and challenging time. For example, local affiliates work to provide many of the things the family is likely to need immediately upon their arrival, including finding housing and furnishing it, stocking the pantry, a and making the family a welcome meal for their first night. When the refugees arrive, the affiliates often greet them at the airport, along with needed translators and caseworkers. After the refugees arrive, the affiliates will help with transportation and facilitate conversation while the refugees learn English, and even provide babysitting services so that the refugees can undertake the necessary steps to transition to life in America, like taking an English placement test or getting social security cards.

22. If HIAS and its affiliates are not able to resettle individuals who are already approved or assured, they will not only lose the $950 per capita funding they are allocated through their cooperative agreement with the

Department of State, impacting staff capacity, but they will also lose the resources and monies expended securing the necessities they are required to provide by the cooperative agreement.

23. In FFY 2016, HIAS's cooperative agreement with the Department of State provided that HIAS and its affiliates would resettle 3,768 refugees and Special Immigrants Visas ("SIVs") in the United States. However, as the number of refugees and SIV's approved for admission increased, HIAS eventually resettled 4,191 individuals that year. The Department of State, aware that it would significantly increase capacity for refugees in FFY 2017, then requested that HIAS apply for higher numbers of arrivals as the refugee program expanded. As a result, in its cooperative agreement for FFY 2017, HIAS was engaged to resettle 4,794 refugees and SIVs.

24. Of the hundreds of clients worldwide who have been vetted, approved for refugee status, and allocated and assured to a HIAS site, only a small number are currently scheduled for travel. Of those, 2 families of 8 total refugees are from the six banned countries and at least 6 lack a US tie as recognized by the State Department's current guidance. Many of these individuals will be prevented from travel as a direct result of the Executive Order, leaving them in precarious situations.

25. Additionally, the federal government is only committing to allowing refugees to travel through July 6, even though other refugees have travel dates booked beyond that date.

26. As a result of the Federal Government's interpretation of the Supreme Court's stay, many of these individuals will still be prevented or delayed from entering the United States, despite the fact that they have a bona fide relationship with a person or entity in the United States. Because security and medical clearances have expiration dates, it is likely that some refugees would lose their readiness for travel during the suspension period and lengthy checks would need to be repeated. Every day that these individuals' entry is delayed, they remain in precarious situations.

27. Because of the extensive time this interview process takes, stopping interviews can delay refugee admissions for next year since the approval process requires several steps and includes several time limited now it delays admission even next year despite living under the new cap. In order for refugees to be cleared to travel, the refugees need travel documents, medical clearance and current security clearance. Delays can cause any one of these pieces to expire, rendering the refugee unable to travel and requiring renewals. Refugees remain in precarious, stressful situations while waiting for final resettlement and family reunification.

28. Many of HIAS's clients abroad whose refugee status has been approved but have yet to be scheduled for travel, including clients from the six banned countries, belong to a category of refugees who, by definition, have a bona fide relationship with a United States entity or a close family relationship.

29. This includes individuals whose family members have petitioned, applied, or sponsored them for refugee

status (often through HIAS and its affiliates as the very first step in initiating a resettlement case.). Refugees seeking entry under Priority 3 or P-3 status have either a parent, child, or spouse who has been recently admitted to the United States as a refugees or asylee. HIAS and its affiliates have pending applications for clients seeking to enter the United States under the P-3 (Priority Three) program.

30. Some HIAS clients have been approved as refugee status through the Central American Minors program, which permits U.S. relatives of persecuted children in Central America to petition for these children to immigrate here. These children remain in vulnerable and dangerous situations in their home countries, despite having been approved for refugee status, and their U.S. family members are forced to endure continued separation from and concern for these children. Other refugee categories are similar in that the characteristics permitting individuals to apply for refugee status under the program guidelines themselves establish a bona fide relationship with a person or entity in the United States, such as for example, the Priority 2 or P-2 program for individuals in Eurasia, the Baltics, El Salvador, Guatemala, and Honduras.

31. Also under the Direct Access Program for Iraqis (DAP for Iraqis) and the Direct Access Program for Syrians (DAP for Syrians), individuals can apply directly with USRAP without the need for a referral from UNHCR. This is based on these individual's current or prior relationship with a U.S. entity. Individuals who are eligible to apply for DAP include those who are at risk of or have experienced serious harm as

a result of their association with the U.S. government or a U.S. entity. This includes individuals who have worked in Iraq or Syria for the U.S. government as interpreters or translators, those employed by U.S. media organization or U.S. non-governmental organizations. Refugees applying through DAP have by definition established a relationship that is "formal, documented, and formed in the ordinary course" because establishing such a relationship is what qualifies them to apply through DAP in the first instance.

32. All beneficiaries of a Form I-730 Refugee/Asylee Relative Petitions have a family member in the United States who has petitioned on their behalf. HIAS represents clients in their family petitions and currently represents at least one client whose family member is from one of the banned countries.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ MARK HETFIELD
MARK HETFIELD

Executed this 30 day of June 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Civil Action No. 1:17-CV-00050-DKW-KSC

STATE OF HAWAI'I, PLAINTIFF

v.

DONALD TRUMP, ET AL., DEFENDANTS

SUPPLEMENTAL DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

SUPPLEMENTAL DECLARATION OF MARK HETFIELD, PRESIDENT AND CEO OF HIAS, INC.

I, Mark Hetfield, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the President and Chief Executive Officer of HIAS, Inc.

2. This declaration supplements my prior declaration in this case, signed June 30, 2017.

3. The positions the federal government has taken in interpreting the Supreme Court's limited stay order threaten concrete and significant harm to HIAS and its clients. This declaration will highlight some of our clients who are or will be affected by the government's interpretation of the Supreme Court order of June 26,

2017 that refugees with a bona fide relationship with an entity or person in the United States be exempt from the entry restrictions in the Executive Order of March 6.

4. I am aware that the government asserted after June 26 that the fact of an assurance by a refugee resettlement organization like HIAS for a refugee does not establish a bona fide relationship to a U.S. entity for refugees. HIAS and our affiliates have currently assured that we can and will resettle several hundred specific refugees who not yet been admitted to the United States. All of these assurances were given, and these individuals became our clients, prior to when the Supreme Court entered the partial stay on June 26, 2017. Some of these clients have no relatives in the United States as far as HIAS knows. Preventing these clients of HIAS from traveling would waste the efforts and resources HIAS and its affiliates have already expended to prepare for their reception in the United States.

5. Several of HIAS's assured clients were already authorized by the U.S. government for travel after July 12, but under the government's new policy will no longer be permitted to travel unless the government is convinced they have a "close family member" in the United States or a bona fide relationship with a U.S. entity. That policy is reflected in an email HIAS received from the U.S. Department of State on July 10, 2017. A true and correct copy of the email, with names and email addresses redacted, is attached as Exhibit A to this declaration. We have identified nine HIAS clients who have not yet been admitted to the United States, who are currently booked for travel after July 12,

2017, and who have no family members in the United States of which HIAS is aware. Based on the guidance of the July 10 email, travel will be cancelled for ten of HIAS' refugee clients.

6. The government's narrow new interpretation of "close familial relationship" in the Supreme Court limited stay order contradicts its previous interpretations and will also adversely impact HIAS's clients. In HIAS's experience, the close relatives which a refugee may have in the United States (grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-in-law and sisters-in-law) will often not be covered by the government's new interpretation of "close family member." For example, we have identified HIAS clients whose only family in the United States to HIAS's knowledge are, respectively: a grandmother; a grandfather; a grandson; an aunt; an uncle; a cousin; a niece and a nephew; and a sister-in-law. One of the refugees assured by HIAS whose travel will be cancelled is an individual who was approved as a refugee through the Lautenberg program. His qualifying family tie in the United States is with his grandmother and he was also expecting to join his two aunts and uncle in this country. According to the Federal Government's current interpretation of the Supreme Court ruling, a grandparent or a grandchild is not a "close family member." Yet in the official instructions issued earlier by the Department of State about the very same Lautenberg program for refugees from the former Soviet Union, the Department of State specifies that "Immediate relatives include spouses, parents, children, sib-

lings, grandparents and grandchildren of legal U.S. residents."

7. The government has so far refused to recognize that individuals in several refugee programs, including the Central American Minor and Lautenberg programs for certain nationals of Iran and the former Soviet republics, are exempt from the ban by virtue of these refugee programs' pre-existing eligibility requirements of having U.S. ties. Currently, HIAS has more than 140 refugee clients who already established ties to the U.S. and who have been approved for the U.S. Refugee Admissions Programs through the Central American Minor and Lautenberg programs. Assessing their ties to the United States on a case-by-case basis will result in possible errors and needless delays that could exacerbate or heighten risks to refugees who continue to be in danger in the countries in which they are located due to protection concerns or needed acute medical care. This is also putting considerable stress and strain on HIAS staff whose workload has increased with the added requirement of explaining these changed requirements to applicants and documenting and establishing 'bona fide relationships' for these categories of cases.

8. Any additional delay in any of these cases, which should be exempt under the Supreme Court's order, will seriously harm HIAS clients. For example, one approved refugee client booked for travel after July 12 is in need of urgent hypertension treatment in the United States. HIAS is concerned that any delay will exacerbate this individual's medical condition. Other clients remain in precarious situations including remaining in physical danger and living in uncertain situations in third coun-

tries while they wait for final travel arrangements. I am aware of one refugee family HIAS has assured that fled Syria, where family members had been killed, to Jordan. In Jordan, they do not have work permission and rely on friends and family for support, but are falling behind on rent and bills and face eviction. A United States citizen family friend is prepared to assist them in their integration into the United States.

9. HIAS and its partners have already taken concrete steps on behalf of many of these individuals, For example, I am aware of a Syrian family lacking family ties in the United States which HIAS had assured for resettlement in New York. A synagogue and a church had partnered in cooperation with HIAS to welcome and support the refugee family and assist them in their integration into the United States. In order to do so, the congregations had raised funds and rented and furnished an apartment, but because of the government's interpretation of the Supreme Court ruling the family is now in limbo in spite of the relationship with HIAS and faith-based entities.

10. Even a relatively short delay of weeks or a month caused by additional processing time for refugees, particularly for those already assured, could cause current security checks to expire, potentially adding years of waiting in dangerous situations before the refugees can travel to safety in the United States.

11. Prior to receiving assurances to travel to the United States, all refugee applicants are subject to numerous security and vetting checks. Refugees must successfully clear all of these checks in order to be approved for resettlement and granted an assurance by

a resettlement agency. Several of these checks can take months or years to complete.

12. First, refugees must clear a Consular Lookout and Support System ("CLASS") check, run by the Department of State Refugee Processing Center. The CLASS check is valid for 15 months.

13. Second, refugees must receive an approved Security Advisory Opinion ("SAO") from the Department of State for *every* identity document possessed by *every* member of the case. This means that a family of four who each has a passport and national identification card must receive eight separate SAOs. Further, none of the SAOs may be obtained concurrently—they must be issued one at a time. Each SAO is valid for a period of 15 months.

14. Third, refugees must undergo an Inter-Agency Check ("IAC") which varies from six months to two years to complete. The IAC involves numerous U.S. intelligence agencies all running the refugees' names, identification documents, and biometrics against proprietary databases (meaning that each agency must run the data check separately). It expires after 33 months.

15. Finally, a Department of Homeland Security officer takes fingerprints which are valid for 15 months.

16. Prior to being assured, each refugee also undergoes a medical check, which is valid for six months.

17. Each of these checks is only valid for certain periods of time. Once the time elapses, the checks "expire" and must be re-initiated.

18. Determining whether refugees have a bona fide relationship on a case-by-case basis will likely result in many refugees having at least one clearance expire during that additional processing time.

19. The expiration of a single clearance often creates a snowball effect because while the first check is being re-run, others will sequentially expire. For that reason, any appreciable delay in processing can result in a refugee's resettlement to the United States being delayed for months or years.

20. The government has instructed that refugee interviews that have already been scheduled should be cancelled unless the applicant "has a claim to a bona fide relationship with an individual in the U.S." *See* Exhibit A. The instructions do *not* make an exception for individuals with a bona fide relationship to an *entity* in the United States, meaning that interviews for those individuals will be cancelled under current guidance.

I hereby declare under penalty of perjury that the foregoing is true and correct.

/s/ MARK HETFIELD
MARK HETFIELD

Executed this 10th day of July 2017

EXHIBIT A to Supplemental Declaration of Mark Hetfield, President and CEO of HIAS, Inc.

[redacted]

From: [redacted]
Sent:
To: [redacted]
Cc: [redacted]
Subject:

Official - SBU

UNCLASSIFIED

From: [redacted]
Sent:
To: [redacted]

Subject: Message #19: Update on Refugee Admissions and Operations

Dear colleagues,

Thank you all for the quick turnaround on collecting bona fide relationship (BFR) documentation from passengers on ABN for travel next week. PRM has sent back a number of responses to the RSCs confirming the validity of these relationships and we are actively working through the rest.

Please see below for additional detailed guidance:

1. We have been informed that all passengers traveling on July 11 and July 12 may proceed as planned, whether or not they have a credible claim to a bona fide relationship with an individual or entity in the United States. Effective July 13, only cases with a credible claim to a bona fide relationship to a person or entity in the

U.S. may travel until the end of the 120-day pause.

2. RSCs are asked to immediately begin reaching out to all passengers currently on ABN for any travel date, in the order of the closest to departure, to confirm whether any case member has a credible claim to a bona fide relationship with an individual or entity in the U.S., as defined in Message #17. Please see the below list of relevant documentation types (Annex A).

3. RSCs do not need to include documentation for the following category of refugee: I-730 (Visa 93), Syrian and Iraqi beneficiaries of approved I-130s, P3 family reunification, and CAM (unless a caregiver is included in the application). These cases may travel and do not need to appear on lists submitted to PRM/A Program Officers.

4. Once BFR documentation is received from the applicant, the RSC should scan and upload it to WRAPS with the document type of "Bona Fide Relationship Evidence" following WRAPS SOPs. [Note: This document type was recently added to WRAPS. If the evidence is a document that is already attached to the case, attach an additional copy of the document and select BFR Evidence as the document type.] Past BFR documentation that has been uploaded without using these labels should be re-scanned and re-uploaded with the correct labels.

5. Once documentation is uploaded for all passengers on a given travel day, the list must be sent

to your PRM/A Program Officer, copied to the Overseas Section Chief. RSCs with fewer passengers may group passengers traveling over multiple days together on one list. Each list should contain at least all passengers departing on a given day (in other words, please do not break up passengers into multiple lists for a single departure day). Lists should be sent at least daily until further notice, unless multiple travel days are included on a single list.

6. RSCs should only send cases that claim a qualified BFR to PRM/A. Cases that do not claim a qualified BFR may not travel. Once BFR documentation is sent to PRM/A, RSCs should enter the following case comment in WRAPS, "Requested PRM BFR Credible Claim Determination." If the case does not claim a qualified BFR, the RSC should enter the following case comment, "RSC determines no Credible Claim to BFR."

7. RSCs are responsible for canceling the travel of all cases that do not have a credible claim to a BFR in the U.S. RSCs should work with IOM regional offices to ensure this travel is cancelled. RPC will issue further guidance on tracking and labeling cases that have been approved or placed on hold in the coming week.

8. When compiling lists of passengers with qualifying BFRs, RSCs should check all cross-references (hard and soft) to determine whether any of the cross-references has a qualifying relationship with the first case. In other words, case A is cross-

referenced with case B. If case A's arrival in the United States would create a qualifying BFR for case B, the RSC should include case B together with case A on the list of cases sent to their PRM/A Program Officer for review, noting the relationship between A and B. Anyone on case B may have the relationship with anyone on case A.

9. In cooperation with DHS/USCIS, PRM/A Program Officers will provide confirmation of the credible claim to the BFR by email back to the RSC. These emails must be scanned and uploaded into WRAPS and the decision should be noted in case comments as "PRM BFR Credible Claim Determination Received: Qualified" or "PRM BFR Credible Claim Determination Received: Not Qualified." Once confirmation is received, the applicant may travel.

10. When the BFR is first claimed by the applicant, RSCs must check what information is already in WRAPS on this relationship. Normally the BFR should already appear in the family tree. The minimum information about the BFR required in WRAPS is name, qualifying relationship, and city and state in the U.S. Thus, if the applicant claims a BFR that does not appear in WRAPS at all, or if the location is listed as Unknown, the RSC must enter this additional BFR documentation in WRAPS. These additions will trigger an IAC bio-diff. If the RSC receives additional information from the applicant on a claim to a BFR in the U.S., such as phone number or email

address, this should be entered into WRAPS as well.

11. DHS/USCIS is preparing to conduct circuit rides in quarter four. For scheduled circuit rides, RSCs should reach out to all applicants scheduled for interview to confirm whether any case member has a claim to a bona fide relationship with an individual in the U.S. Only those making a claim (and qualifying cross-references per #7 above) should remain on the schedule for interview. RSCs should ensure BFR documentation is uploaded into WRAPS following the above guidance and included in the case file prior to interview.

12. RSCs should contact all applicants to request BFR documentation as applicants reach the following stages (the documentation only needs to be collected once, depending on which stage the person is currently at):

    i. When scheduled for an upcoming circuit ride

    ii. When scheduled for I-590 stamping (if not already done at point i)

    iii. When RFD (if not already done at point i or ii)

13. We are still confirming the types of relationships with U.S. entities that will qualify as bona fide relationships under the Supreme Court ruling. Assurances alone do not qualify, nor does the fact that the case is an embassy referral.

Please flag any potential relationships with entities in the U.S. to your PRM/A Program Officer for guidance.

14. PRM will issue guidance the week of July 10 on when new ABNs may be scheduled for new cases with bona fide relationships.
15. Public messaging and updated text for RSC websites will be forthcoming.

Annex A: Relevant documentation to establish a credible claim to a bona fide relationship with an individual in the United States:

- birth certificates
- marriage certificates
- pending/approved I-130 petitions
- pending/approved I-730s
- RSC and UNHCR family trees (including the family tree of the family member in the United States)
- Affidavits of Relationship
- sworn affidavits (by applicant, family members in U.S., other family members, entity in the United States)
- databases (e.g. CCD, CLAIMS, CIS, WRAPS)
- testimony
- previous statements to RSC or UNHCR
- DNA

- any other documentation/evidence that corroborates the relationship

EXHIBIT D

DECLARATION OF GENERAL JOHN R. ALLEN

I, John R. Allen, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a retired U.S. Marine Corps four-star general and former commander of the International Security Assistance Force (ISAF) in Afghanistan. I am currently a senior fellow and co-director of the Center for 21st Century Security and Intelligence at the Brookings Institute.

2. Prior to joining the Brookings Institute, I served as the Special Presidential Envoy for the Global Coalition to Counter ISIL. I served in the military for nearly 38 years in a variety of positions in the Marine Corps and the Joint Force. I commanded at every level in the Marine Corps through the Marine Expeditionary Brigade. I served as the G-3 operations officer of the 2nd Marine Division. I was the aide de camp and military secretary to the 31st commandant of the Marine Corps.

3. As the commander of the NATO ISAF and United States Forces in Afghanistan from July 2011 to February 2013, I commanded the 150,000 U.S. and NATO forces in Afghanistan. During this time, we recovered the 33,000 U.S. surge forces, moved the Afghan National Security Forces into the lead for combat operations, and pivoted NATO forces from being a conventional combat force into an advisory command.

4. Prior to my time in Afghanistan I served in Iraq from 2006-2008. I served as Deputy Command-

ing General, II Marine Expeditionary Force and Commanding General, 2nd Marine Expeditionary Brigade, deploying to Iraq for Operation Iraqi Freedom and serving as the Deputy Commanding General of Multi-National Forces West and II MEF (Forward) in Al Anbar Province, Iraq. As Deputy Commanding General, I worked closely with and relied heavily on our Iraqi allies.

5. The U.S. military's Iraqi employees, contractors, and sub-contractors have close relationships with U.S. entities and were essential to U.S. military operations in Iraq. All military operations depend on robust and trustworthy relationships with local partners. In Iraq, the U.S. military worked with Iraqis, either through direct employment or through contract or subcontract relationships, to provide essential services, such as translation and interpretation, base support, security, logistics and maintenance, construction, transportation, or communication support.

6. Local national Iraqis worked closely with U.S. military officials, U.S. contractors, or U.S. subcontractors to complete projects that were vital to the success of the U.S. mission. For example, I personally worked closely with Iraqi interpreters to communicate with local Iraqi leaders in Al Anbar Province in Iraq. The accurate interpretation and cultural understanding that my interpreter provided was essential to our work of providing security to the province.

7. The U.S. military required documentation from and vetted all local Iraqi employees, contractors,

sub-contractors, and vendors. Our Iraqi allies were vetted and screened throughout their employment. The U.S. military's local national employees and vendors were all required to be vetted through security background checks, which were implemented to prevent anyone who was a threat to the U.S. mission from being employed or given access to a U.S. base.

8. The U.S. military used intelligence databases, including information from Iraqi government records and biometric data such as fingerprints, to both screen and periodically rescreen all local nationals who would have had access to a U.S. base or have worked closely with the U.S. mission. Iraqis who had access to bases or sensitive locations were issued badges required for entry and had to follow strict security protocols. Iraqis who failed to follow protocols or who were deemed to be a threat to security were fired and tracked in such databases.

9. Because of their close relationship with the U.S. mission, U.S.-affiliated Iraqis and their families were and continue to be under an ongoing, serious threat of being killed by our enemies. Our Iraqi allies risk their lives to support the U.S. mission. The enemies of the U.S. mission in Iraq have targeted and killed, and will continue to target and kill, Iraqis who are affiliated with the U.S. through employment as an interpreter or a contractor.

10. There are significant numbers of enemy actors who target U.S.-affiliated Iraqis. This most nota-

bly includes ISIS, but there are many other militias and groups, of multiple religious sects, political affiliations, and locations within Iraq, that seek to harm U.S.-affiliated Iraqis. Because of the large number of threats, a targeted U.S.-affiliated Iraqi may not find safety in any part of Iraq.

11. Mere evidence of an U.S. affiliation, such as a badge to enter a U.S. base, can put an Iraqi at risk. When the enemies are unable to target individuals directly, they will target family members of U.S.-affiliated Iraqis.

12. U.S. affiliated Iraqis face extreme danger while they wait to be processed. Local national interpreters and contractors have been killed while working alongside U.S. forces, and they have also been killed at their homes or while traveling to U.S. bases.

13. As a result of these threats, every extra day our allies must wait for refugee applications to be processed can literally mean life or death.

14. For the U.S. military, the Priority 2 Direct Access Program for U.S.-Affiliated Iraqi refugees (P2-DAP) is a promise to help our Iraqi allies that ensures their safety and their continued support for the U.S. mission. When the Refugee Crisis in Iraq Act, also known as the Kennedy Act, was signed into law, it was a promise by the United States to provide protection to our Iraqi allies who were vital to our missions' safety and success.

15. Specifically, the Refugee Crisis in Iraq Act was signed into law on January 28, 2008. It commit-

ted the United States to a more ambitious set of programs to provide US.-affiliated Iraqis facing danger inside Iraq routes of escape to the United States. One program that the Act established allowed Iraqis with demonstrated work for the U.S. government (USG), contractors, or U.S.-based NGOs or media organizations, to directly access the U.S. refugee admissions program. This is known as the Priority 2 Direct Access Program for U.S.-Affiliated Iraqis (P-2 DAP). Today, this is the path by which wartime allies who served alongside us in Iraq can find safe passage to the United States.

16. As this program is crucial for the success of our military operations in Iraq and our future military operations abroad (including Afghanistan), ensuring its vitality is key. The program is strictly reserved for Iraqis and their family members who have documented ties with U.S. entities and U.S. citizens from their work supporting the U.S. mission in Iraq. A detailed background on the specific aspects of this program will explain the redundancy in having refugees in this program prove they have a de facto bona fide relationship with a person or entity in the United States and show the need to exempt refugees in this program from the refugee freeze.

17. The U.S. government agencies administering P2-DAP verify the documentation and relationship with the U.S. military or U.S. entity that employed the Iraqi applicant or family member, as well as the threat in Iraq due to that relationship. The

Iraqi P2-DAP applicants at issue[1] must have been employed by an entity affiliated with the U.S. mission in Iraq, or be a family member of an employee; that relationship must be documented, and that documentation must be submitted to the U.S. government, reviewed by the Department of State, and verified for an application to proceed.

18. The Refugee Crisis in Iraq Act established "Direct Access" for a designated class of Iraqi refugees, those who have experienced severe harm, or who believe they are at risk of serious harm, as result of their association with the USG. In order to qualify, an applicant must have to have been an employee of the USG, an interpreter/translator for the USG or Multi-National Forces, an employee of U.S.-affiliated organization or entity closely associated with the U.S. mission in Iraq that has received USG funding, an employee of an U.S. NGO or media organization, or a spouse, children, parent, sibling of someone with the qualifying work.

19. In order to apply to the program, applicants must email the International Organization for Migra-

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[1] The Iraqi P2-DAP program also includes Iraqis with a U.S. affiliation based on a family member in the United States who has filed and received approval of an I-130 immigration petition on their behalf. The administration has indicated that all of those applicants will be considered to have close family relationships and therefore will not be subject to the refugee ban. The discussion of "Iraqi P2-DAP applicants" in this declaration is therefore limited to Iraqis who were employed by U.S.-affiliated entities and their family.

tion (IOM), which operates aspects of the program for the Department of State, with their basic biographic data and copies of documents related to their U.S.-affiliated work, including but not limited to their badges, letters of recommendation, and contracts that prove USG funding. In addition, applicants are required to have a point of contact at their qualifying employer verify the applicant's employment with the company.

20. IOM collects and reviews the information. The Department of State reviews and determines whether the U.S. affiliation has been independently verified. After verifying that applicants have qualifying ties to the USG and its mission in Iraq, IOM schedules applicants for a pre-screening interview to further assess the applicants' eligibility for the program.

21. Once IOM decides that the basic requirements appear to be met, applicants interview with the Department of Homeland security personnel, to further demonstrate that they meet the U.S refugee definition in addition to providing additional evidence that they are a member of the designated P-2 population.

22. This means that, by definition, any Iraqi refugee with a pending application in the Iraqi DAP program has already been adjudicated by the United States to have a concrete, bona fide and documented relationship with a U.S. entity.

23. Requiring Iraqi P-2 DAP applicants to again prove their previously verified bona fide relationship

needlessly and senselessly delays the process, risks the deaths of our allies and their families, and harms the U.S. military's reputation and operations overseas. I am deeply concerned by the U.S. government's interpretation of the Supreme Court decision, as it will unnecessarily delay processing and may shut down the entire program. These delays and shutdowns have life threatening impacts on our allies who already risked their lives to advance our mission.

24. Iraqi P2-DAP applicants must have a bona fide relationship with a U.S. entity based on their or a family member's employment. That relationship was independently verified in order to allow them access to apply for P2-DAP and again, in-person, during the refugee application process. To put these applications on hold pending further verification of a bona fide relationship is to put our allies and their families needlessly and senselessly in harm's way.

25. Military operations depend on robust and trustworthy relationships with local partners. If the United States wishes to continue achieving success in current and future operations overseas, it must protect those who help enable that success. U.S. partners in other conflict zones, including Afghanistan (where thousands of U.S. troops are currently deployed), are watching to see how the United States treats its networks in Iraq. Maintaining the promises made to those Iraqis who served with us is not only principled but will improve our military's effectiveness in other

regions; it will instill confidence and loyalties where local supporters are needed. The effectiveness of future missions depends on the United States' willingness and ability to safeguard those individuals, and their families, who risk their lives in support of U.S. missions.

26. Military service instills in a person certain values: Loyalty. Duty. Honor. Integrity. These values apply universally; to each other, to our nation, and also to all those who stood by our sides when we needed their assistance. Many of us can point to a moment when one of our foreign allies saved our lives—often by taking up arms against our common enemies. They acted because they believed in America, in our mission, and in the promise that was given. We should keep that promise, and among the ways we do this is to continue the P-2 DAP program for those Iraqi allies.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Signature: /s/ JOHN R. ALLEN, GEN. USMC (RET.)

Executed this 10th day of July, 2017

July 11, 2017

CWS Declaration

Church World Service (CWS), a humanitarian agency that brings together 37 Protestant, Anglican and Orthodox member communions. The CWS constituency represents more than 30 million people in the United States who affirm the importance of refugee resettlement as a private-public partnership that has broad support from communities across the country.

I, Erol Kekic, am the executive director of the CWS Immigration and Refugee Program (IRP). I have worked in the field of refugee protection and resettlement for more than 21 years, leading CWS's work in humanitarian protection and development of durable solutions that bridge the gap between disaster relief and development. Before serving as the associate director and then executive director of CWS IRP, I served as the associate director for the Lutheran Family and Community Service Immigration and Refugee Program and assistant director for resettlement for the Lutheran Immigration and Refugee Service, both in New York. I have a Bachelor of Science degree in chemical engineering at the University of Sarajevo and have done graduate work at The University of Detroit-Mercy in Michigan and at Oxford University Refugee Study Centre in the UK.

The United States Refugee Admissions Program (USRAP) works with nine agencies to resettle refugees into communities across the country; one of these agencies is CWS, which agreed to serve 8,687 individuals in FY 2017. Of this number, CWS has already

resettled 6,664 refugees and has an additional 3,626 individuals in its assured-not-yet-arrived overseas pipeline (some of whom may arrive next year); all of whom have been waiting for years to flee from harm and the chance to live in safety.

U.S. Ties Who Are Not "Bona fide relationships" Under the Administration's Interpretation

Of the 3,626 currently in the CWS pipeline who have been assured and have a U.S. tie, 1,072 individuals do not have what the Administration considers to be a "bona fide relationship". In its interpretation of the Supreme Court's decision on this case, the Administration is asserting that refugees who have expected to join their grandmothers, aunts, uncles, cousins, nieces, nephews and friends do not have a "bona fide relationship" with an individual in the United States.

Among the group of individuals being impacted by the Administration's interpretation of a bona fide relationship is a 93 year old grandmother resettled to the US, who three years ago filed family reunification applications for her daughter and granddaughter from Ukraine, both of whom are booked to arrive in the United States in two weeks' time. Unfortunately, neither the mother nor the daughter, who are both, importantly, religious minorities, a group that the State Department has prioritized for resettlement, will be allowed to depart for the U.S. Their cases are "hard-cross-referenced", which means one cannot travel without the other, and as the granddaughter does not have what is considered to be a "bona fide relationship" to her U.S. tie (i.e.: her grandmother), the mother —who has a bona fide relationship—will also be pre-

vented from travel. As a result, this 93 year old grandmother may never be reunited with her daughter or granddaughter.

"Cross-Referenced" Family Members

Resettlement Support Centers (RSCs), which pre-screen refugees referred to the US program regularly process refugees as "cross-referenced" cases if a refugee identifies a need to travel and/or live in the same location with a family member or friend. These decisions are often vulnerability or dependency based. Guidance from the federal government to RSCs on cross-referencing specifies that "a cross-reference is a link between cases for the purpose of travel and resettlement. Cross-referenced cases are those that have an established association with each other[1]."

If they need to be processed together (travel and live together), the RSC will hard-cross-reference (HCR) them to ensure they go through each step in the process together. If they want to resettle together, but one case has more urgent needs, the RSC will normally soft-cross-reference (SCR) their cases. Soft-cross referencing ensures that they will eventually be reunited in the same location in the U.S.

Implementation of this recognizes that many refugee families are not commonly that of a nuclear family, but that grandparents, cousins, aunts and uncles frequently play a role in raising children and that familial rela-

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[1] RSC SOP 2: Pre-screening. This SOP describes minimum standards set forth by PRM and RPC, and guides local implementation by RSCs within their regional coverage.

tionships do not end at the "bona fide" level as currently defined by the Administration. CWS has hundreds of individuals who may not have a "bona fide" relationship to a U.S. tie as currently defined by the Administration, but whose cases are cross-referenced to cases of family or friends who have already arrived in the U.S.

Refugees "Without US ties"

CWS also has 1,384 refugees in its assured-not-yet-arrived pipeline who do not have a U.S. tie, but who have no option to return home or be integrated into their host country. Among these individuals is a displaced Somali family of ten. Their children have been diagnosed as malnourished and continue to live in unsafe conditions. One of them was, in fact, attacked on his way to his interview with the resettlement support staff and suffered severe head trauma. Their mother suffers from strokes that have left half her body paralyzed. After having spent the past 19 years in a desolate refugee camp along the border of Kenya and Somalia, they finally were meant to arrive in the U.S. this week but their travel has been cancelled. "If these and other refugees are denied entry, families like this—who face an existential threat every day—will be in limbo indefinitely. Their medical exams and security checks will expire, they will not receive adequate treatment for their serious medical conditions; their children will remain malnourished and unable to attend school, and their future uncertain. Despite being told that they were approved for admission to the U.S., the promise of resettling safely in the U.S. will now be revoked, for no fault of their own.

I declare under penalty of perjury that the foregoing is true and correct. Executed on Thursday, July 13th, 2017.

Respectfully,

/s/ EROL KEKIC
EROL KEKIC
Executive Director, Immigration and Refugee Programs
Church World Service

Declaration of John Feruzi

1. My name is John Feruzi. I am around 21 years old. I do not know the exact day and month that I was born, but I do know I was born in 1995. I was born in the Congo. Now I live in Dzaleka Refugee Camp in Malawi.

2. I cannot say anything about my birth parents because never knew them. I went to live with my uncle, Mwenda Watata, when I was very young. I do not consider him my uncle. He is my father. I call him "Baba," which means "Dad" in Swahili. His wife is like my mother. She raised me, too. She breastfed me as a child. I call my aunt "Mom." I do not refer to them as my uncle and aunt. They are my parents.

3. Dad is the only father I have ever known. He means everything to me. I love him very much. He brought me up. I have loved living with him. He has always been there for me.

4. I lived with Dad and Mom ever since I was a child, ever since I can remember. Dad always says I am his child, even though I am listed as his nephew on paperwork. He refers to me when he talks about his sons, because he has always considered me to be his son. Though we are cousins by birth, his birth children and I consider each other brothers and sisters. I am considered born into the family, not just a cousin.

5. My dad means everything to me. He took me to school. He gave me advice just as he did to his birth children. He took care of me when I was

sick. He treated me exactly the same as his other children. We always ate together as a family.

6. When I was about 14 years old, Congo soldiers attacked our house and our family. I do not remember many details, but I remember that our family was on the run until we reached Malawi. That is really all I can remember. I was about 14 at the time. I believe we came to Malawi around October of 2009. We applied for refugee status around that time.

7. Our whole family started the application process together. We filed together. I was included because I was considered one of his children, even though I am listed as his nephew in the application. We went through all the steps together. We were fingerprinted at the same time. We took our photos at the same time. We all went to the interviews together. We completed our forms together and turned them in together. We finished the process together. We made travel arrangements together. Our cases progressed together. Dad handled everything and told us children what we needed to do.

8. Dad and Mom never officially adopted me. We just never thought it was necessary. Mom breastfed me. I was their kid. It was never a question. I was listed as their nephew on the paperwork, but we were all still processed together as a family. The fact that I was their nephew by birth never came up in my interview. It never was an issue until we all got to the airport to travel to the United States and they divided us. I never

expected it to be an issue. We always thought I would be resettled with the rest of the family.

9. On the 4th of July, 2017, our whole family went to the airport together. We were all going to be resettled in Arkansas in the United States.

10. I expected that we would travel together and live together in the United States. All of a sudden, we got to the airport and I was told to stay behind. I think maybe this was because I was not considered family. I do not understand this system. I feel like I don't understand anything anymore. All the people I grew up with are gone. This is my family. This is my Dad. This is my Mom. These are my brothers and sisters. I am separated from the people I love most in the world. My family is in the U.S. now without me. They are all there, except me. I am in the refugee camp without them.

11. I am not someone who cries easily. After this happened, I cried more than ever before in my life. I'm not in a good situation emotionally. All the people I care about are gone. My father who took care of me my whole life is gone. My whole family is all gone. I can't wrap my head around what happened. I don't understand why it happened. I'm scared I'll never get to join them. I'm afraid I'll never see Dad, Mom, and my brothers and sisters again.

12. I am providing this declaration in the hopes that somehow it might help my family and I be together again.

13. If anyone can get in touch with my dad, please tell him I'm thinking of him and the family. Please tell my dad I love him and miss him so much. If there is anything I can do to help move this process along, I'll do it. I'll do whatever I can. I just want to be with my family again.

14. I authorize Marissa Ram, attorney with the International Refugee Assistance Project ("IRAP") to sign this declaration on my behalf. I live in Dzaleka Refugee Camp and I do not have access to a printer. I would have to go out and pay to use one. Unfortunately, I do not have any money. Dad helped provide for me and now that he is gone I do not have any money. If my signature is needed at a later date and someone can pay for mailing service, I can and will sign the declaration myself. This declaration has been read to me in Swahili, a language I understand and am fluent in. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 13 of July, 2017
New York, New York
/s/ MARISSA RAM
MARISSA RAM, Attorney with the International Refugee Assistance Project, on behalf of **John Feruzi**

Interpreter Certification

I, Nancy Wallace, certify that I am fluent in the English and Swahili languages, and that the verbal translation I provided to the declarant of the above document from English into Swahili is complete, true, and accurate to the best of my abilities.

Executed on 13 of July, 2017
Davis, California
/s/ NANCY WALLACE
NANCY WALLACE

Declaration of Mwenda Watata

1. My name is Mwenda Watata. I was born in Mboko in the Democratic Republic of Congo on January 20, 1956. In my culture, we say our family name first, then our given name. In my paperwork for the United States, my name is written in reverse order, with my given name first and my family name last. U.S. documents list my name as Watata Mwenda.

2. I am fluent in several languages, including Swahili and French.

3. I have eleven children. I have eight biological sons, two biological daughters, and my son John Fernzi. In terms of defining family, I have always seen John as my own son.

4. I don't know the exact day that John was born, but it was sometime in August of 1995. To my knowledge, he is listed as 21 years old on official paperwork.

5. John is the biological son of my younger brother, who is now deceased.

6. When John was just about one month old, my younger brother left him with me. Cholera was rampant during this time. Many people died from it. My younger brother and his wife died, too. John came to live with us. My wife, Nyasa Safi, had just had a baby boy about a month ago, too. They were around the same age. We think they might even be just a few days apart.

7. My wife breastfed them together. It was as if she had given birth to two babies. We raised them together. We raised them as both our children. We treated them both exactly the same.

8. My role as a father was the same with all my children. I never discriminated or treated my children differently from one another. Two of my biological children have a different mom than Nyasa. I loved them all the same. John is my child. He is my son.

9. I just never saw the need to legally adopt John. He was our son. He didn't know his biological mother and father. My wife breastfed him just as she did with his brother. We raised them together. He has never lived with anyone else except us.

10. I also didn't see the need to adopt him because that is just not necessary in our culture. In our cultural tradition, these distinctions between family aren't important. We're related by blood. We're a family. If someone passes away, you take care of their children. Their children become your children. My brother's son became my son. I raised John since he was a baby. He is my child. I was and am responsible for him. There is just no need to legally adopt in our culture.

11. In 2009, we were attacked by Congo soldiers outside our home. They wanted to take my life. So we had to flee. We eventually reached Malawi and in or around October 2009, we applied for refugee status there.

12. Throughout our life in the DRC and Malawi, I have never left anyone behind, even when we had to flee. It was very important to me to keep the family together. That includes my son John.

13. I just can't understand why John was made to stay behind. I truly don't understand. We went through every step of process together, fingerprints, photos, interviews. To my understanding John was being considered our child throughout the process, even though legally he is my nephew. This never came up as a problem during the interviews. Nothing seemed strange about the process. We were honest in our answers. There were no weird questions. No one ever asked us why we didn't adopt John.

14. We were all expecting to move together. So I don't understand why this happened in the end. I don't understand why we were separated from him.

15. On July 4, 2017, officers from Dzaleka Refugee Camp accompanied us from the camp to the airport. When we arrived at the airport, they called out the names of the travelers. One by one all of our names were called. Except my son John. Despite going through the whole process together as a family and arranging our travel together, he was not on that list.

16. It was very confusing. It's hard to wrap my head around what happened.

17. One of the officers from the refugee camp told us not to worry about it. He said maybe John would join us in a week and told us to go on ahead. They

didn't give us any reason. We all cried about it. But it seemed like our tears didn't help at all.

18. It's been more than a week and we are still separated. John's still not here. It doesn't seem like he is coming now. And no one can tell us why.

19. I understand John's belief that he was left behind because he's not considered family. The only difference between him and all my other children that are here with me is that he is legally my nephew. All my sons are here. Except John. When he was left behind at the airport, it was like leaving my son.

20. John's mom is just devastated. One of her children is not with her. There is a gap in our family. It's not the same anymore. John has been with us his whole life. His siblings are depressed. There is something missing. I'm heartbroken because John is not sitting next to me like the rest of my sons. All my sons are here, except John. I want to see him. I miss him. I want him to be here with me. We need him home with us.

21. I am very worried about John because I don't even know if he's safe. What if he's been attacked? He's in a refugee camp. Anything can happen there and now he's all alone.

22. I'm worried about his health. Is he eating? Does he even have enough to eat? I always made sure all my kids had good, healthy food. I made sure they all had enough to eat, even when times were hard. I provided everything for my children.

23. If I could speak with John right now, I would tell him to please not to lose hope. There are people trying to help. I believe something good can come out of this. I believe we will be together again.

24. If there is anything anyone can do to help reunite me with my son, I hope someone will let me know.

25. This declaration has been read to me in French, a language I understand and am fluent in. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 13 of July, 2017
Fayetteville, Arkansas
/s/ MWENDA WATATA
MWENDA WATATA

Interpreter Certification

I, Shezza Dallal, certify that I am fluent in the English and French languages, and that the verbal translation I provided to the declarant of the above document from English into French is complete, true, and accurate to the best of my abilities.

Executed on 13 of July, 2017
New York, New York
/s/ SHEZZA DALLAL
SHEZZA DALLAL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-15589

STATE OF HAWAII, ET AL., PLAINTIFFS-APPELLEES

v.

DONALD J. TRUMP, ET AL.,
DEFENDANTS-APPELLANTS

On Appeal from the United States District Court
for the District of Hawaii, No. 1:17-cv-00050-DKW-KSC
District Judge Derrick K. Watson

SECOND SUPPLEMENTAL DECLARATION OF RISA E. DICKSON

I, Risa E. Dickson, do solemnly swear and would competently testify as follows.

1. I am Vice President for Academic Planning and Policy at the University of Hawai'i System. I began this role in February 2015. As Vice President, I have overall responsibility for leadership, planning, and intercampus coordination of academic affairs, student affairs, and academic policy and planning, among other things.

2. On April 20, 2017, the University of Hawai'i ("University") posted a story on-line about the number of international students admitted to the University for the 2017-2018 school year. *UH a popular destination for international students,*

UH News (Apr. 20, 2017), http://www.hawaii.edu/news/2017/04/20/uh-a-popular-destination-for-international-students/.

3. As reported in the story, as of that date, 11 graduate students, each of whom are from one of the six countries affected by the March 6, 2017 executive order, had received offers of admission from their respective programs at the University, for the 2017-2018 school year, and an additional 21 total graduate students from the six affected countries were still being considered for admission by their respective programs.

4. Since this on-line story was posted, as of May 12, 2017, the University's records reflect that at least three graduate applicants, each from one of the six affected countries, have accepted their respective offers of admission and thus committed to attend the University in the Fall. The University's records reflect that each of these students is a national of one of the six affected countries.

5. In addition, since the on-line story was posted, as of May 12, 2017, the University's records reflect that three additional offers of admission were extended to graduate applicants, each of whom is from one of the six affected countries. Therefore, as of May 12, 2017, there are 11 graduate applicants, each from one of the six designated countries, with pending offers of admission for the 2017-2018 school year.

6. Classes begin for the upcoming school year on August 21, 2017. All students, campus-wide, need to be present by at least that date to begin their classes. Additionally, many students at UH have mandatory orientation, registration, or other activities that begin before the classes start.

7. Campus-wide graduate student orientation begins August 14, 2017, but is optional. However, each program has its own requirements for when new graduate students must arrive on campus. Of the three students who have accepted their offers of admission noted above, at least one of them must be on campus by August 1, 2017 and another must be on campus by August 10, 2017.

8. In general, graduate student applicants who receive offers of admission are asked to respond within 30 days of receipt of the offer letter. However, graduate programs may extend that deadline. As a result, the process of admitting new graduate students extends over the summer until classes begin.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Honolulu, Hawai'i, May 18, 2017.

/s/ RISA E. DICKSON
RISA E. DICKSON

Protecting the Nation from Foreign Terrorist Entry into the United States

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, and to protect the American people from terrorist attacks by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. *Purpose.* The visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Perhaps in no instance was that more apparent than the terrorist attacks of September 11, 2001, when State Department policy prevented consular officers from properly scrutinizing the visa applications of several of the 19 foreign nationals who went on to murder nearly 3,000 Americans. And while the visa-issuance process was reviewed and amended after the September 11 attacks to better detect would-be terrorists from receiving visas, these measures did not stop attacks by foreign nationals who were admitted to the United States.

Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program. Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United

States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.

In order to protect Americans, the United States must ensure that those admitted to this country do not bear hostile attitudes toward it and its founding principles. The United States cannot, and should not, admit those who do not support the Constitution, or those who would place violent ideologies over American law. In addition, the United States should not admit those who engage in acts of bigotry or hatred (including "honor" killings, other forms of violence against women, or the persecution of those who practice religions different from their own) or those who would oppress Americans of any race, gender, or sexual orientation.

Sec. 2. *Policy.* It is the policy of the United States to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.

Sec. 3. *Suspension of Issuance of Visas and Other Immigration Benefits to Nationals of Countries of Particular Concern.* (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall immediately conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the

benefit is who the individual claims to be and is not a security or public-safety threat.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed for adjudications and a list of countries that do not provide adequate information, within 30 days of the date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening of foreign nationals, and to ensure that adequate standards are established to prevent infiltration by foreign terrorists or criminals, pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants and nonimmigrants, of such persons for 90 days from the date of this order (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas).

(d) Immediately upon receipt of the report described in subsection (b) of this section regarding the information needed for adjudications, the Secretary of State shall request all foreign governments that do not supply such information to start providing such information regarding their nationals within 60 days of notification.

(e) After the 60-day period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the President a list of countries recommended for inclusion on a Presidential proclamation that would prohibit the entry of foreign nationals (excluding those foreign nationals traveling on diplomatic visas, North Atlantic Treaty Organization visas, C-2 visas for travel to the United Nations, and G-1, G-2, G-3, and G-4 visas) from countries that do not provide the information requested pursuant to subsection (d) of this section until compliance occurs.

(f) At any point after submitting the list described in subsection (e) of this section, the Secretary of State or the Secretary of Homeland Security may submit to the President the names of any additional countries recommended for similar treatment.

(g) Notwithstanding a suspension pursuant to subsection (c) of this section or pursuant to a Presidential proclamation described in subsection (e) of this section, the Secretaries of State and Homeland Security may, on a case-by-case basis, and when in the national interest, issue visas or other immigration benefits to nationals of countries for which visas and benefits are otherwise blocked.

(h) The Secretaries of State and Homeland Security shall submit to the President a joint report on the progress in implementing this order within 30 days of the date of this order, a second report within 60 days of the date of this order, a third report within 90 days of the date of this order, and a fourth report within 120 days of the date of this order.

Sec. 4. *Implementing Uniform Screening Standards for All Immigration Programs.* (a) The Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation shall implement a program, as part of the adjudication process for immigration benefits, to identify individuals seeking to enter the United States on a fraudulent basis with the intent to cause harm, or who are at risk of causing harm subsequent to their admission. This program will include the development of a uniform screening standard and procedure, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that the applicant is who the applicant claims to be; a process to evaluate the applicant's likelihood of becoming a positively contributing member of society and the applicant's ability to make contributions to the national interest; and a mechanism to assess whether or not the applicant has the intent to commit criminal or terrorist acts after entering the United States.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Director of National Intelligence, and the Director of the Federal Bureau of Investigation, shall submit to the President an initial report on the progress of this directive within 60 days of the date of this order, a second report within 100 days of the date of this order, and a third report within 200 days of the date of this order.

Sec. 5. *Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017.* (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secre-

tary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest —including when the person is a religious minority in

his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship—and it would not pose a risk to the security or welfare of the United States.

(f) The Secretary of State shall submit to the President an initial report on the progress of the directive in subsection (b) of this section regarding prioritization of claims made by individuals on the basis of religious-based persecution within 100 days of the date of this order and shall submit a second report within 200 days of the date of this order.

(g) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of Homeland Security shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettlement of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 6. *Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility.* The Secretaries of State and Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority in section 212 of the INA,

8 U.S.C. 1182, relating to the terrorism grounds of inadmissibility, as well as any related implementing memoranda.

Sec. 7. *Expedited Completion of the Biometric Entry-Exit Tracking System.* (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for all travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive contained in subsection (a) of this section. The initial report shall be submitted within 100 days of the date of this order, a second report shall be submitted within 200 days of the date of this order, and a third report shall be submitted within 365 days of the date of this order. Further, the Secretary shall submit a report every 180 days thereafter until the system is fully deployed and operational.

Sec. 8. *Visa Interview Security.* (a) The Secretary of State shall immediately suspend the Visa Interview Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1202, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent

the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that non-immigrant visa-interview wait times are not unduly affected.

Sec. 9. *Visa Validity Reciprocity.* The Secretary of State shall review all nonimmigrant visa reciprocity agreements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If a country does not treat United States nationals seeking nonimmigrant visas in a reciprocal manner, the Secretary of State shall adjust the visa validity period, fee schedule, or other treatment to match the treatment of United States nationals by the foreign country, to the extent practicable.

Sec. 10. *Transparency and Data Collection.* (a) To be more transparent with the American people, and to more effectively implement policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available within 180 days, and every 180 days thereafter:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related

activity, affiliation, or material support to a terrorism-related organization, or any other national security reasons since the date of this order or the last reporting period, whichever is later;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States, since the date of this order or the last reporting period, whichever is later; and

(iii) information regarding the number and types of acts of gender-based violence against women, including honor killings, in the United States by foreign nationals, since the date of this order or the last reporting period, whichever is later; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security and the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of State shall, within one year of the date of this order, provide a report on the estimated long-term costs of the USRAP at the Federal, State, and local levels.

Sec. 11. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

/s/ DONALD J. TRUMP
DONALD J. TRUMP

THE WHITE HOUSE,

Jan. 27, 2017.

Protecting the Nation from Foreign Terrorist Entry into the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, and section 301 of title 3, United States Code, and to protect the Nation from terrorist activities by foreign nationals admitted to the United States, it is hereby ordered as follows:

Section 1. *Policy and Purpose.* (a) It is the policy of the United States to protect its citizens from terrorist attacks, including those committed by foreign nationals. The screening and vetting protocols and procedures associated with the visa-issuance process and the United States Refugee Admissions Program (USRAP) play a crucial role in detecting foreign nationals who may commit, aid, or support acts of terrorism and in preventing those individuals from entering the United States. It is therefore the policy of the United States to improve the screening and vetting protocols and procedures associated with the visa-issuance process and the USRAP.

(b) On January 27, 2017, to implement this policy, I issued Executive Order 13769 (Protecting the Nation from Foreign Terrorist Entry into the United States).

(i) Among other actions, Executive Order 13769 suspended for 90 days the entry of certain aliens from seven countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen. These are countries that had already been identified as presenting heightened concerns about terrorism and travel to the

United States. Specifically, the suspension applied to countries referred to in, or designated under, section 217(a)(12) of the INA, 8 U.S.C. 1187(a)(12), in which Congress restricted use of the Visa Waiver Program for nationals of, and aliens recently present in, (A) Iraq or Syria, (B) any country designated by the Secretary of State as a state sponsor of terrorism (currently Iran, Syria, and Sudan), and (C) any other country designated as a country of concern by the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence. In 2016, the Secretary of Homeland Security designated Libya, Somalia, and Yemen as additional countries of concern for travel purposes, based on consideration of three statutory factors related to terrorism and national security: "(I) whether the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States; (II) whether a foreign terrorist organization has a significant presence in the country or area; and (III) whether the country or area is a safe haven for terrorists." 8 U.S.C. 1187(a)(12)(D)(ii). Additionally, Members of Congress have expressed concerns about screening and vetting procedures following recent terrorist attacks in this country and in Europe.

(ii) In ordering the temporary suspension of entry described in subsection (b)(i) of this section, I exercised my authority under Article II of the Constitution and under section 212(f) of the INA, which provides in relevant part: "Whenever the President

finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. 1182(f). Under these authorities, I determined that, for a brief period of 90 days, while existing screening and vetting procedures were under review, the entry into the United States of certain aliens from the seven identified countries—each afflicted by terrorism in a manner that compromised the ability of the United States to rely on normal decision-making procedures about travel to the United States—would be detrimental to the interests of the United States. Nonetheless, I permitted the Secretary of State and the Secretary of Homeland Security to grant case-by-case waivers when they determined that it was in the national interest to do so.

(iii) Executive Order 13769 also suspended the USRAP for 120 days. Terrorist groups have sought to infiltrate several nations through refugee programs. Accordingly, I temporarily suspended the USRAP pending a review of our procedures for screening and vetting refugees. Nonetheless, I permitted the Secretary of State and the Secretary of Homeland Security to jointly grant case-by-case waivers when they determined that it was in the national interest to do so.

(iv) Executive Order 13769 did not provide a basis for discriminating for or against members of any particular religion. While that order allowed for prioritization of refugee claims from members of persecuted religious minority groups, that priority applied to refugees from every nation, including those in which Islam is a minority religion, and it applied to minority sects within a religion. That order was not motivated by animus toward any religion, but was instead intended to protect the ability of religious minorities—whoever they are and wherever they reside—to avail themselves of the USRAP in light of their particular challenges and circumstances.

(c) The implementation of Executive Order 13769 has been delayed by litigation. Most significantly, enforcement of critical provisions of that order has been temporarily halted by court orders that apply nationwide and extend even to foreign nationals with no prior or substantial connection to the United States. On February 9, 2017, the United States Court of Appeals for the Ninth Circuit declined to stay or narrow one such order pending the outcome of further judicial proceedings, while noting that the "political branches are far better equipped to make appropriate distinctions" about who should be covered by a suspension of entry or of refugee admissions.

(d) Nationals from the countries previously identified under section 217(a)(12) of the INA warrant additional scrutiny in connection with our immigration policies because the conditions in these countries present heightened threats. Each of these countries is a

state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones. Any of these circumstances diminishes the foreign government's willingness or ability to share or validate important information about individuals seeking to travel to the United States. Moreover, the significant presence in each of these countries of terrorist organizations, their members, and others exposed to those organizations increases the chance that conditions will be exploited to enable terrorist operatives or sympathizers to travel to the United States. Finally, once foreign nationals from these countries are admitted to the United States, it is often difficult to remove them, because many of these countries typically delay issuing, or refuse to issue, travel documents.

(e) The following are brief descriptions, taken in part from the Department of State's *Country Reports on Terrorism 2015* (June 2016), of some of the conditions in six of the previously designated countries that demonstrate why their nationals continue to present heightened risks to the security of the United States:

(i) *Iran.* Iran has been designated as a state sponsor of terrorism since 1984 and continues to support various terrorist groups, including Hizballah, Hamas, and terrorist groups in Iraq. Iran has also been linked to support for al-Qa'ida and has permitted al-Qa'ida to transport funds and fighters through Iran to Syria and South Asia. Iran does not cooperate with the United States in counterterrorism efforts.

(ii) *Libya.* Libya is an active combat zone, with hostilities between the internationally recognized

government and its rivals. In many parts of the country, security and law enforcement functions are provided by armed militias rather than state institutions. Violent extremist groups, including the Islamic State of Iraq and Syria (ISIS), have exploited these conditions to expand their presence in the country. The Libyan government provides some cooperation with the United States' counterterrorism efforts, but it is unable to secure thousands of miles of its land and maritime borders, enabling the illicit flow of weapons, migrants, and foreign terrorist fighters. The United States Embassy in Libya suspended its operations in 2014.

(iii) *Somalia.* Portions of Somalia have been terrorist safe havens. Al-Shabaab, an al-Qa'ida-affiliated terrorist group, has operated in the country for years and continues to plan and mount operations within Somalia and in neighboring countries. Somalia has porous borders, and most countries do not recognize Somali identity documents. The Somali government cooperates with the United States in some counterterrorism operations but does not have the capacity to sustain military pressure on or to investigate suspected terrorists.

(iv) *Sudan.* Sudan has been designated as a state sponsor of terrorism since 1993 because of its support for international terrorist groups, including Hizballah and Hamas. Historically, Sudan provided safe havens for al-Qa'ida and other terrorist groups to meet and train. Although Sudan's support to al-Qa'ida has ceased and it provides some cooperation with the United States' counterterrorism efforts,

elements of core al-Qa'ida and ISIS-linked terrorist groups remain active in the country.

(v) *Syria.* Syria has been designated as a state sponsor of terrorism since 1979. The Syrian government is engaged in an ongoing military conflict against ISIS and others for control of portions of the country. At the same time, Syria continues to support other terrorist groups. It has allowed or encouraged extremists to pass through its territory to enter Iraq. ISIS continues to attract foreign fighters to Syria and to use its base in Syria to plot or encourage attacks around the globe, including in the United States. The United States Embassy in Syria suspended its operations in 2012. Syria does not cooperate with the United States' counterterrorism efforts.

(vi) *Yemen.* Yemen is the site of an ongoing conflict between the incumbent government and the Houthi-led opposition. Both ISIS and a second group, al-Qa'ida in the Arabian Peninsula (AQAP), have exploited this conflict to expand their presence in Yemen and to carry out hundreds of attacks. Weapons and other materials smuggled across Yemen's porous borders are used to finance AQAP and other terrorist activities. In 2015, the United States Embassy in Yemen suspended its operations, and embassy staff were relocated out of the country. Yemen has been supportive of, but has not been able to cooperate fully with, the United States in counterterrorism efforts.

(f) In light of the conditions in these six countries, until the assessment of current screening and vetting

procedures required by section 2 of this order is completed, the risk of erroneously permitting entry of a national of one of these countries who intends to commit terrorist acts or otherwise harm the national security of the United States is unacceptably high. Accordingly, while that assessment is ongoing, I am imposing a temporary pause on the entry of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen, subject to categorical exceptions and case-by-case waivers, as described in section 3 of this order.

(g) Iraq presents a special case. Portions of Iraq remain active combat zones. Since 2014, ISIS has had dominant influence over significant territory in northern and central Iraq. Although that influence has been significantly reduced due to the efforts and sacrifices of the Iraqi government and armed forces, working along with a United States-led coalition, the ongoing conflict has impacted the Iraqi government's capacity to secure its borders and to identify fraudulent travel documents. Nevertheless, the close cooperative relationship between the United States and the democratically elected Iraqi government, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combat ISIS justify different treatment for Iraq. In particular, those Iraqi government forces that have fought to regain more than half of the territory previously dominated by ISIS have shown steadfast determination and earned enduring respect as they battle an armed group that is the common enemy of Iraq and the United States. In addition, since Executive Order 13769 was issued, the Iraqi government has expressly undertaken

steps to enhance travel documentation, information sharing, and the return of Iraqi nationals subject to final orders of removal. Decisions about issuance of visas or granting admission to Iraqi nationals should be subjected to additional scrutiny to determine if applicants have connections with ISIS or other terrorist organizations, or otherwise pose a risk to either national security or public safety.

(h) Recent history shows that some of those who have entered the United States through our immigration system have proved to be threats to our national security. Since 2001, hundreds of persons born abroad have been convicted of terrorism-related crimes in the United States. They have included not just persons who came here legally on visas but also individuals who first entered the country as refugees. For example, in January 2013, two Iraqi nationals admitted to the United States as refugees in 2009 were sentenced to 40 years and to life in prison, respectively, for multiple terrorism-related offenses. And in October 2014, a native of Somalia who had been brought to the United States as a child refugee and later became a naturalized United States citizen was sentenced to 30 years in prison for attempting to use a weapon of mass destruction as part of a plot to detonate a bomb at a crowded Christmas-tree-lighting ceremony in Portland, Oregon. The Attorney General has reported to me that more than 300 persons who entered the United States as refugees are currently the subjects of counterterrorism investigations by the Federal Bureau of Investigation.

(i) Given the foregoing, the entry into the United States of foreign nationals who may commit, aid, or

support acts of terrorism remains a matter of grave concern. In light of the Ninth Circuit's observation that the political branches are better suited to determine the appropriate scope of any suspensions than are the courts, and in order to avoid spending additional time pursuing litigation, I am revoking Executive Order 13769 and replacing it with this order, which expressly excludes from the suspensions categories of aliens that have prompted judicial concerns and which clarifies or refines the approach to certain other issues or categories of affected aliens.

Sec. 2. *Temporary Suspension of Entry for Nationals of Countries of Particular Concern During Review Period.* (a) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall conduct a worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat. The Secretary of Homeland Security may conclude that certain information is needed from particular countries even if it is not needed from every country.

(b) The Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall submit to the President a report on the results of the worldwide review described in subsection (a) of this section, including the Secretary of Homeland Security's determination of the information needed from each country for adjudications and

a list of countries that do not provide adequate information, within 20 days of the effective date of this order. The Secretary of Homeland Security shall provide a copy of the report to the Secretary of State, the Attorney General, and the Director of National Intelligence.

(c) To temporarily reduce investigative burdens on relevant agencies during the review period described in subsection (a) of this section, to ensure the proper review and maximum utilization of available resources for the screening and vetting of foreign nationals, to ensure that adequate standards are established to prevent infiltration by foreign terrorists, and in light of the national security concerns referenced in section 1 of this order, I hereby proclaim, pursuant to sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), that the unrestricted entry into the United States of nationals of Iran, Libya, Somalia, Sudan, Syria, and Yemen would be detrimental to the interests of the United States. I therefore direct that the entry into the United States of nationals of those six countries be suspended for 90 days from the effective date of this order, subject to the limitations, waivers, and exceptions set forth in sections 3 and 12 of this order.

(d) Upon submission of the report described in subsection (b) of this section regarding the information needed from each country for adjudications, the Secretary of State shall request that all foreign governments that do not supply such information regarding their nationals begin providing it within 50 days of notification.

(e) After the period described in subsection (d) of this section expires, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, shall submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means. The Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which any of them recommends other lawful restrictions or limitations deemed necessary for the security or welfare of the United States.

(f) At any point after the submission of the list described in subsection (e) of this section, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, may submit to the President the names of any additional countries recommended for similar treatment, as well as the names of any countries that they recommend should be removed from the scope of a proclamation described in subsection (e) of this section.

(g) The Secretary of State and the Secretary of Homeland Security shall submit to the President a joint report on the progress in implementing this order within 60 days of the effective date of this order, a second report within 90 days of the effective date of this order, a third report within 120 days of the effec-

tive date of this order, and a fourth report within 150 days of the effective date of this order.

Sec. 3. *Scope and Implementation of Suspension.*

(a) *Scope.* Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspension of entry pursuant to section 2 of this order shall apply only to foreign nationals of the designated countries who:

(i) are outside the United States on the effective date of this order;

(ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and

(iii) do not have a valid visa on the effective date of this order.

(b) *Exceptions.* The suspension of entry pursuant to section 2 of this order shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any foreign national who is admitted to or paroled into the United States on or after the effective date of this order;

(iii) any foreign national who has a document other than a visa, valid on the effective date of this order or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as an advance parole document;

(iv) any dual national of a country designated under section 2 of this order when the individual is traveling on a passport issued by a non-designated country;

(v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or

(vi) any foreign national who has been granted asylum; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

(c) *Waivers.* Notwithstanding the suspension of entry pursuant to section 2 of this order, a consular officer, or, as appropriate, the Commissioner, U.S. Customs and Border Protection (CBP), or the Commissioner's delegee, may, in the consular officer's or the CBP official's discretion, decide on a case-by-case basis to authorize the issuance of a visa to, or to permit the entry of, a foreign national for whom entry is otherwise suspended if the foreign national has demonstrated to the officer's satisfaction that denying entry during the suspension period would cause undue hardship, and that his or her entry would not pose a threat to national security and would be in the national interest. Unless otherwise specified by the Secretary of Homeland Security, any waiver issued by a consular officer as part of the visa issuance process will be effective both for the issuance of a visa and any subsequent entry on that visa, but will leave all other requirements for admission or entry unchanged. Case-by-case waivers could be appropriate in circumstances such as the following:

(i) the foreign national has previously been admitted to the United States for a continuous period of

work, study, or other long-term activity, is outside the United States on the effective date of this order, seeks to reenter the United States to resume that activity, and the denial of reentry during the suspension period would impair that activity;

(ii) the foreign national has previously established significant contacts with the United States but is outside the United States on the effective date of this order for work, study, or other lawful activity;

(iii) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;

(iv) the foreign national seeks to enter the United States to visit or reside with a close family member (*e.g.*, a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry during the suspension period would cause undue hardship;

(v) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(vi) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee) and the employee can document that he or she has provided faithful and valuable service to the United States Government;

(vii) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 *et seq.*, traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(viii) the foreign national is a landed Canadian immigrant who applies for a visa at a location within Canada; or

(ix) the foreign national is traveling as a United States Government-sponsored exchange visitor.

Sec. 4. *Additional Inquiries Related to Nationals of Iraq.* An application by any Iraqi national for a visa, admission, or other immigration benefit should be subjected to thorough review, including, as appropriate, consultation with a designee of the Secretary of Defense and use of the additional information that has been obtained in the context of the close U.S.-Iraqi security partnership, since Executive Order 13769 was issued, concerning individuals suspected of ties to ISIS or other terrorist organizations and individuals coming from territories controlled or formerly controlled by ISIS. Such review shall include consideration of whether the applicant has connections with ISIS or other terrorist organizations or with territory that is or has been under the dominant influence of ISIS, as well as any other information bearing on whether the applicant may be a threat to commit acts of terrorism or otherwise threaten the national security or public safety of the United States.

Sec. 5. *Implementing Uniform Screening and Vetting Standards for All Immigration Programs.* (a) The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence shall implement a program, as part of the process for adjudications, to identify individuals who seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry. This program shall include the development of a uniform baseline for screening and vetting standards and procedures, such as in-person interviews; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; amended application forms that include questions aimed at identifying fraudulent answers and malicious intent; a mechanism to ensure that applicants are who they claim to be; a mechanism to assess whether applicants may commit, aid, or support any kind of violent, criminal, or terrorist acts after entering the United States; and any other appropriate means for ensuring the proper collection of all information necessary for a rigorous evaluation of all grounds of inadmissibility or grounds for the denial of other immigration benefits.

(b) The Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Director of National Intelligence, shall submit to the President an initial report on the progress of the program described in subsection (a) of this section within 60 days of the effective date of this

order, a second report within 100 days of the effective date of this order, and a third report within 200 days of the effective date of this order.

Sec. 6. *Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017.* (a) The Secretary of State shall suspend travel of refugees into the United States under the USRAP, and the Secretary of Homeland Security shall suspend decisions on applications for refugee status, for 120 days after the effective date of this order, subject to waivers pursuant to subsection (c) of this section. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication processes to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. The suspension described in this subsection shall not apply to refugee applicants who, before the effective date of this order, have been formally scheduled for transit by the Department of State. The Secretary of State shall resume travel of refugees into the United States under the USRAP 120 days after the effective date of this order, and the Secretary of Homeland Security shall resume making decisions on applications for refugee status only for stateless persons and nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that the additional procedures implemented

pursuant to this subsection are adequate to ensure the security and welfare of the United States.

(b) Pursuant to section 212(f) of the INA, I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any entries in excess of that number until such time as I determine that additional entries would be in the national interest.

(c) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretary of State and the Secretary of Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the entry of such individuals as refugees is in the national interest and does not pose a threat to the security or welfare of the United States, including in circumstances such as the following: the individual's entry would enable the United States to conform its conduct to a preexisting international agreement or arrangement, or the denial of entry would cause undue hardship.

(d) It is the policy of the executive branch that, to the extent permitted by law and as practicable, State and local jurisdictions be granted a role in the process of determining the placement or settlement in their jurisdictions of aliens eligible to be admitted to the United States as refugees. To that end, the Secretary of State shall examine existing law to determine the extent to which, consistent with applicable law, State and local jurisdictions may have greater involvement in the process of determining the placement or resettle-

ment of refugees in their jurisdictions, and shall devise a proposal to lawfully promote such involvement.

Sec. 7. *Rescission of Exercise of Authority Relating to the Terrorism Grounds of Inadmissibility.* The Secretary of State and the Secretary of Homeland Security shall, in consultation with the Attorney General, consider rescinding the exercises of authority permitted by section 212(d)(3)(B) of the INA, 8 U.S.C. 1182(d)(3)(B), relating to the terrorism grounds of inadmissibility, as well as any related implementing directives or guidance.

Sec. 8. *Expedited Completion of the Biometric Entry-Exit Tracking System.* (a) The Secretary of Homeland Security shall expedite the completion and implementation of a biometric entry-exit tracking system for in-scope travelers to the United States, as recommended by the National Commission on Terrorist Attacks Upon the United States.

(b) The Secretary of Homeland Security shall submit to the President periodic reports on the progress of the directive set forth in subsection (a) of this section. The initial report shall be submitted within 100 days of the effective date of this order, a second report shall be submitted within 200 days of the effective date of this order, and a third report shall be submitted within 365 days of the effective date of this order. The Secretary of Homeland Security shall submit further reports every 180 days thereafter until the system is fully deployed and operational.

Sec. 9. *Visa Interview Security.* (a) The Secretary of State shall immediately suspend the Visa Interview

Waiver Program and ensure compliance with section 222 of the INA, 8 U.S.C. 1202, which requires that all individuals seeking a nonimmigrant visa undergo an in-person interview, subject to specific statutory exceptions. This suspension shall not apply to any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; traveling for purposes related to an international organization designated under the IOIA; or traveling for purposes of conducting meetings or business with the United States Government.

(b) To the extent permitted by law and subject to the availability of appropriations, the Secretary of State shall immediately expand the Consular Fellows Program, including by substantially increasing the number of Fellows, lengthening or making permanent the period of service, and making language training at the Foreign Service Institute available to Fellows for assignment to posts outside of their area of core linguistic ability, to ensure that nonimmigrant visa-interview wait times are not unduly affected.

Sec. 10. *Visa Validity Reciprocity.* The Secretary of State shall review all nonimmigrant visa reciprocity agreements and arrangements to ensure that they are, with respect to each visa classification, truly reciprocal insofar as practicable with respect to validity period and fees, as required by sections 221(c) and 281 of the INA, 8 U.S.C. 1201(c) and 1351, and other treatment. If another country does not treat United States nationals seeking nonimmigrant visas in a truly reciprocal manner, the Secretary of State shall adjust the visa validity

period, fee schedule, or other treatment to match the treatment of United States nationals by that foreign country, to the extent practicable.

Sec. 11. *Transparency and Data Collection.* (a) To be more transparent with the American people and to implement more effectively policies and practices that serve the national interest, the Secretary of Homeland Security, in consultation with the Attorney General, shall, consistent with applicable law and national security, collect and make publicly available the following information:

(i) information regarding the number of foreign nationals in the United States who have been charged with terrorism-related offenses while in the United States; convicted of terrorism-related offenses while in the United States; or removed from the United States based on terrorism-related activity, affiliation with or provision of material support to a terrorism-related organization, or any other national-security-related reasons;

(ii) information regarding the number of foreign nationals in the United States who have been radicalized after entry into the United States and who have engaged in terrorism-related acts, or who have provided material support to terrorism-related organizations in countries that pose a threat to the United States;

(iii) information regarding the number and types of acts of gender-based violence against women, including so-called "honor killings," in the United States by foreign nationals; and

(iv) any other information relevant to public safety and security as determined by the Secretary of Homeland Security or the Attorney General, including information on the immigration status of foreign nationals charged with major offenses.

(b) The Secretary of Homeland Security shall release the initial report under subsection (a) of this section within 180 days of the effective date of this order and shall include information for the period from September 11, 2001, until the date of the initial report. Subsequent reports shall be issued every 180 days thereafter and reflect the period since the previous report.

Sec. 12. *Enforcement.* (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and organizations, to ensure efficient, effective, and appropriate implementation of the actions directed in this order.

(b) In implementing this order, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including, as appropriate, those providing an opportunity for individuals to claim a fear of persecution or torture, such as the credible fear determination for aliens covered by section 235(b)(1)(A) of the INA, 8 U.S.C. 1225(b)(1)(A).

(c) No immigrant or nonimmigrant visa issued before the effective date of this order shall be revoked pursuant to this order.

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry. Any prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.

(e) This order shall not apply to an individual who has been granted asylum, to a refugee who has already been admitted to the United States, or to an individual granted withholding of removal or protection under the Convention Against Torture. Nothing in this order shall be construed to limit the ability of an individual to seek asylum, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.

Sec. 13. *Revocation.* Executive Order 13769 of January 27, 2017, is revoked as of the effective date of this order.

Sec. 14. *Effective Date.* This order is effective at 12:01 a.m., eastern daylight time on March 16, 2017.

Sec. 15. *Severability.* (a) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other persons or circumstances shall not be affected thereby.

(b) If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural

requirements, the relevant executive branch officials shall implement those procedural requirements.

Sec. 16. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

/s/ DONALD J. TRUMP
DONALD J. TRUMP

THE WHITE HOUSE,

Mar. 6, 2017.

Presidential Documents

Memorandum of June 14, 2017

Effective Date in Executive Order 13780

Memorandum for the Secretary of State[,] the Attorney General[,] the Secretary of Homeland Security[, and] the Director of National Intelligence

This memorandum provides guidance for the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence in light of two preliminary injunctions that bar enforcement of certain provisions of Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States" (Mar. 6, 2017). The preliminary injunction entered by the United States District Court for the District of Maryland, and affirmed in substantial part by the United States Court of Appeals for the Fourth Circuit, bars enforcement of section 2(c) of the Executive Order. The portions of the preliminary injunction entered by the United States District Court for the District of Hawaii that were affirmed by the recent decision of the United States Court of Appeals for the Ninth Circuit bar enforcement of certain provisions of sections 2 and 6 of the Executive Order.

Various provisions of sections 2 and 6 of the Executive Order (as well as sections 3 and 12(c), which delineate the scope of the suspension contained in section 2(c)), refer to the Order's effective date. Section 14 of the Executive Order provides that the Order was effective

at 12:01 a.m., eastern daylight time on March 16, 2017. Sections 2 and 6, however, were enjoined before that effective date, and the courts of appeals have affirmed the injunctions with respect to certain provisions of sections 2 and 6. As a result, under the terms of the Executive Order, the effective date of the enjoined provisions (as well as related provisions of sections 3 and 12(c)) is delayed or tolled until those injunctions are lifted or stayed.

In light of questions in litigation about the effective date of the enjoined provisions and in the interest of clarity, I hereby declare the effective date of each enjoined provision to be the date and time at which the referenced injunctions are lifted or stayed with respect to that provision. To the extent it is necessary, this memorandum should be construed to amend the Executive Order.

Because the injunctions have delayed the effective date of section 12(c), no immigrant or nonimmigrant visa issued before the effective date of section 2(c) shall be revoked pursuant to the Executive Order.

I hereby direct the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence to jointly begin implementation of each relevant provision of sections 2 and 6 of the Executive Order 72 hours after all applicable injunctions are lifted or stayed with respect to that provision, to ensure an orderly and proper implementation of those provisions. Prior to that time, consular officers may issue valid visas to, and the Secretary of Homeland Security may admit, otherwise eligible aliens without regard to sections 2 and 6. If not otherwise

revoked, visas and other travel documents issued during this period remain valid for travel as if they were issued prior to the effective date.

/s/ DONALD J. TRUMP
DONALD J. TRUMP

THE WHITE HOUSE,
Washington, June 14, 2017